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# TEXAS REGISTER

*Volume 32 Number 25*

*June 22, 2007*

*Pages 3761 - 3904*

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*Sarah Prowell  
10th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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***Texas Register***, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the  
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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for June 8, 2007

Appointed as Conservator of the Texas Youth Commission, pursuant to Government Code §2104.011 for a term to expire the earlier of two (2) years from the date of appointment or when the conservatorship dissolves, Edward G. Owens, Jr. of Huntsville (replacing Jay Kimbrough of Calvert).

### Appointments for June 12, 2007

Appointed to the Employee Retirement System of Texas Board of Directors for a term to expire August 31, 2012, Cydney C. Donnell of Fredericksburg (replacing Carolyn Gallagher of Austin whose term expired).

Rick Perry, Governor

TRD-200702407

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## Proclamation 41-3073

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, one proposed amendment to the Constitution of Texas was voted on in the Constitutional Amendment Election held on May 12, 2007; and

WHEREAS, on the 28th day of May, 2007, I, Rick Perry, Governor of the State of Texas, did certify the tabulation prepared by the Secretary of State; and

WHEREAS, the tabulation and total of the votes cast for and against the proposed amendment established that the voters of the State of Texas adopted the following proposed amendment by a majority vote to wit:

PROPOSITION 1 as submitted by Senate Joint Resolution 13, 80th Legislature, Regular Session authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes for the 2006 and 2007 tax years.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 28th day of May, 2007.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200702366

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# THE ATTORNEY GENERAL

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The *Texas Register* publishes summaries of the following:  
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from  
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

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Opinions

**Opinion No. GA-0550**

The Honorable John W. Segrest

McLennan County Criminal District Attorney

219 North 6th Street, Suite 200

Waco, Texas 76701

Re: Effect of constable's constructive resignation prior to the county's  
redistricting that abolished the constable's precinct (RQ-0554-GA)

## SUMMARY

A person who constructively resigns the office of constable by declaring candidacy for another office of profit or trust holds over in office as constable until a successor qualifies. A constable who is in office as a holdover officer on the effective date of a commissioners court or-

der that changes precinct boundaries has the duty to serve as constable in the precinct of the constable's residence until his successor qualifies or until the end of the term for which the constable was elected or appointed. A person who qualifies to succeed such a constable must serve the remainder of the holdover constable's term to which he was elected.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200702400

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: June 13, 2007

◆ ◆ ◆



# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 435. FIRE FIGHTER SAFETY

##### 37 TAC §435.3

The Texas Commission on Fire Protection has adopted, on an emergency basis, an amendment to §435.3, Self-contained Breathing Apparatus, relating to the standards that must be met by certain self-contained breathing apparatus required to be supplied by entities that employ firefighters. The applicable description of the standard for the self-contained breathing apparatus was not included in a previous amendment to §435.3 due to a clerical error. This rule must be amended on an emergency basis to ensure that applicable standards for self-contained breathing apparatus are published appropriately.

The purpose of the amendment is to ensure the safety of the end user in that all self-contained breathing apparatus is updated and meets the current standards in effect at the time the entity contracts for new, rebuilt or used self-contained breathing apparatus requirements of the National Fire Protection Association's.

This amendment is being adopted on an emergency basis pursuant to §2001.034(c), Texas Government Code. An identical version of this rule will be published at a later date under §2001.23 and §2001.29, Texas Government Code.

##### *§435.3. Self-contained Breathing Apparatus.*

The employing entity shall:

- (1) (No change.)

(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-contained Breathing Apparatus for Fire Fighters:

(A) the National Fire Protection Association standard applicable to a self-contained breathing apparatus is the standard in effect at the time the entity contracts for new, rebuilt, or used self-contained breathing apparatus;

(B) an entity may continue to use a self-contained breathing apparatus that meets the requirements of an earlier edition of NFPA 1981, unless the Commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the Commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.

(3) - (6) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702295

Gary L. Warren

Executive Director

Texas Commission on Fire Protection

Effective Date: June 7, 2007

Expiration Date: October 4, 2007

For further information, please call: (512) 936-3838

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS-- STANDARDS

##### 1 TAC §251.6

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Commission on State Emergency Communications or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Commission on State Emergency Communications (CSEC) files this notice of intent to repeal §251.6, concerning *Guidelines for Strategic Plans, Amendments, and Revenue Allocation*.

Section 251.6 establishes guidelines for Regional Planning Commissions (RPCs) to follow in developing, amending and submitting to CSEC their regional plans to establish and operate 9-1-1 service. Section 251.6 also includes provisions for allocating appropriated 9-1-1 service fees and equalization surcharge to the RPCs. Section 251.6 is no longer necessary as the relevant guidelines have been moved to CSEC Program Policy Statement (PPS) 033 and the allocation of appropriated funds is determined by state law.

Paul Mallett, CSEC Executive Director, has determined that for each year of the first five years that the repeal is in effect the enforcing or administering of the repeal does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Mallett has also determined that for each year of the first five years that the repeal is in effect the public benefit from the repeal will be the elimination of an extraneous rule that no longer serves a purpose.

The anticipated economic costs to persons who are required to comply with the repeal will remain the same as the RPCs are still required to submit regional plans to CSEC for review and approval. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

All comments or questions regarding the proposed repeal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. The text of §251.6 can be found on CSEC's website at [http://www.911.state.tx.us/browse.php/rules\\_legislation](http://www.911.state.tx.us/browse.php/rules_legislation).

The repeal of §251.6 is proposed under Texas Health and Safety Code §771.051 and §771.055, which establishes the general jurisdiction of CSEC to develop standards for regional plans. The repeal is proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

No other statutes, articles, or codes are affected by the proposed repeal.

§251.6. *Guidelines for Strategic Plans, Amendments, and Revenue Allocation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702343

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 305-6930



##### 1 TAC §251.14

The Commission on State Emergency Communications (Commission) proposes amendments to §251.14, concerning *General Provisions and Definitions*.

Section 251.14 establishes the general provisions for defining terms utilized within the context of Commission rules. This rule allows for compilation of frequently used 9-1-1 industry related terms used in the rulemaking process. This rule was first adopted by the Commission on January 20, 2005.

The changes proposed are to adopt by reference 9-1-1 related terms and definitions contained within applicable federal and state laws or regulations, Public Utility Commission of Texas rules, and the National Emergency Number Association (NENA) Master Glossary of 9-1-1 Terminology. Alignment will provide consistency for all definitions and acronyms, and will reduce the work required to establish definitions for terms and acronyms consistently utilized by the 9-1-1 entities in Texas. Terms that are unique to the statewide 9-1-1 program will be retained.

Paul Mallett, the Commission's Executive Director, has determined that for each year of the first five years that the amendments are in effect the enforcing or administering the amended section does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Mallett has also determined that for each year of the first five years that the amendments are in effect the public benefit from the changes will be to provide greater clarity regarding the definition of 9-1-1 related terms and acronyms.

There are no anticipated economic costs to persons who are required to comply with the amended section. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendments to §251.14 are proposed under Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.056, 771.057, 771.071, 771.072, 771.075, 771.0751 and 771.079; which authorize the Commission to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service. The amendments are proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

No other statutes, articles, or codes are affected by the proposed amendments.

#### §251.14. *General Provisions and Definitions.*

(a) Purpose. ~~[The Commission on State Emergency Communications (Commission) herein establishes the following general provisions for defining terms utilized within the context of Commission rules.] This rule defines terms commonly used by the Commission on State Emergency Communications (Commission) in its rules and policy statements. Terms not defined in this rule shall be defined by Applicable Law. The National Emergency Number Association (NENA) Master Glossary of 9-1-1 Terminology is adopted by reference. [allows for compilation of all technical and 9-1-1 industry related terms used in the rulemaking process.]~~

(b) Definitions. As generally used by the Commission, the ~~[The]~~ following ~~[words and]~~ terms mean: ~~[, when used in Commission rules, shall have the following meanings; unless the context clearly indicates otherwise.]~~

(1) - (2) (No change.)

(3) 9-1-1 Call Taking Position--Equipment required ~~[acquired with 9-1-1 funds] to deliver [answer the delivery of]~~ an emergency 9-1-1 call. The position is defined as the equipment necessary to answer the call, not the associated personnel. A position consists of a device for answering the 9-1-1 calls, a device to display 9-1-1 call information, and the related telephone circuitry and computer and/or router equipment necessary to ensure reliable handling of the 9-1-1 call.

(4) 9-1-1 Database--An organized collection of information, which is typically stored in computer systems that are comprised of fields, records (data), and indexes. In 9-1-1, such databases include master street address guides (MSAG), telephone numbers, emergency service numbers (ESNs ~~[ESN]~~), and telephone customer records. This information is used for the delivery of location information to a designated public safety answering point (PSAP). Use of the 9-1-1 database must be authorized by the Commission and RPC. The database is developed and maintained by the local government agency and/or the RPC as described within the regional strategic plan in accordance with Commission Rule 251.9, *Guidelines for Database Maintenance Funds*.

(5) 9-1-1 Database Record--A set of data elements, populated by a telecommunications service provider, edited and stored by the 9-1-1 database services provider, which includes the necessary call-back, location, and telecommunications service provider information required for enhanced 9-1-1 (ALI), Wireless Phase I, or Wireless Phase II level of 9-1-1 service.

(6) 9-1-1 Equipment and Services--Equipment and services acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 wireline or wireless call to an appropriate PSAP or transfer to a remote site or a responding agency, including equipment to maintain the database.

(7) - (12) (No change.)

(13) 9-1-1 Program Assets--9-1-1 and database maintenance, mapping, or other equipment ~~[Addressing Equipment]~~ purchased with 9-1-1 Funds.

~~[(14) 9-1-1 System--The communications infrastructure, equipment, and services assembled to establish, extend, or improve communication paths to deliver voice and/or data necessary for the answering of and response to a 9-1-1 call.]~~

(14) ~~[(15)]~~ Addressing Completion--A county addressing project that has developed a comprehensive MSAG, assigned street addresses and notified the residents of their 9-1-1 address, provided the MSAG and new or changed address information associated with the particular telephone numbers to the applicable telephone companies, submitted corrected address errors to the telco, and established a maintenance methodology in accordance with §251.9 of this title.

~~[(16) Answering Point--A communications facility established as an answering location to receive the voice and/or data communications necessary for the answering of and response to 9-1-1 calls and other emergencies.]~~

(15) ~~[(17)]~~ Applicable Law--Includes, but is not limited to, federal law and FCC regulations; ~~[the State Administration of Emergency Communications Act, Chapter 771,] Texas Health and Safety Code Chapter 771; Commission rules, Texas Administrative Code (TAC), [implementing the Act contained in] Title 1, Part 12 [XX, Texas Administrative Code]; Public Utility Commission of Texas rules, TAC Title 16, Part 2, Chapters 22 and 26; the Uniform Grant Management Standards, TAC Title 1, Part 1, Chapter 5, Subchapter A, Division 4. [Sections 5-151 - 5-165, Texas Administrative Code; the Preservation and Management of Local Government Records Act, Chapter 441, Subchapter J, Texas Government Code; and amendments to the cited statutes and rules.] Also referred to as "applicable laws [law] and rules."~~

~~[(18) Automatic Location Identification (ALI)--A system that enables the automatic display at the PSAP of the caller's telephone number, the address/location of the telephone, and supplementary emergency services information.]~~

(16) Backup PSAP--A continuously operable but not continuously staffed PSAP to which 9-1-1 calls are routed should the Primary or Remote PSAP be inoperable.

~~[(19) Automatic Number Identification (ANI)--A system that enables the automatic display at the PSAP of the ten-digit number associated with the device from which a 9-1-1 call originates.]~~

~~[(20) Call Associated Signaling (CAS)--A method for delivery of the mobile directory number (MDN) of the calling party plus the emergency service routing digits (ESRD) from the wireless network through the 9-1-1 selective router to the PSAP. The 20 digits of data delivered are sent either over Feature Group D (FG-D) or ISUP from the wireless switch to the 9-1-1 router. From the router to the PSAP,~~

the 20-digit stream is delivered using either Enhanced Multi-Frequency (EMF) or ISDN connections.}]

[(21)] Call Back Number--The mobile directory number (MDN) of a Wireless End User who has made a 9-1-1 call, which usually can be used by the PSAP to call back the Wireless End User if a 9-1-1 call is disconnected. In certain situations, the MDN forwarded to the PSAPs may not provide the PSAP with information necessary to call back the Wireless End User making the 9-1-1 call, including, but not limited to, situations affected by illegal use of Service (such as fraud, cloning, and tumbling) and uninitialized handsets and non-authenticated handsets.}]

[(17)] [(22)] Capital Equipment--Items and components whose cost is over \$5,000 and have a useful life of at least one year.

[(18)] [(23)] Capital Equipment Asset--Items and components whose cost is over \$5,000 and which have a useful life of at least one year.

[(19)] [(24)] Capital Purchase--A procurement of items, systems, or services that cost is over \$5,000 in the aggregate, and that have a useful life of at least one year.

[(20)] [(25)] Capital Replacement Cost--The cost of a piece of equipment that was originally identified to be amortized (i.e. the original cost for equipment.)

[(26)] Cell Sector--An area, geographically defined by WSP (according to WSP's own radio frequency coverage data), and consisting of a certain portion of all of the total coverage area of a Cell Site.}]

[(27)] Cell Sector Identifier--The unique numerical designation given to a particular Cell Sector that identifies that Cell Sector.}]

[(28)] Cell Site--A radio base station in the WSP Wireless Network that receives and transmits wireless communications initiated by or terminated to a wireless handset, and links such telecommunications to the WSP's network.}]

[(29)] Cell Site/Sector Information--Information that indicates, to the receiver of the information, the location of the Cell Site receiving a 9-1-1 call initiated by a Wireless End User, and which may also include additional information regarding a Cell Sector.}]

[(30)] Class of Service--A standard acronym, code or abbreviation of the classification of telephone service of the Wireless End User, such as WRLS (wireless), that is delivered to the PSAP CPE.}]

[(21)] [(31)] Commission--Commission on State Emergency Communications. [(CSEC)]--Also referred to as CSEC [the Commission].

[(32)] Competitive Local Exchange Carrier or Certified Local Exchange Carrier (CLEC)--Another name for a local exchange carrier (LEC) after Congress, in 1996, passed a law to bring competition to local telephone services.}]

[(22)] [(33)] Contingency Routing Plan--Routing scheme to provide for the provision of uninterrupted 9-1-1 service in the event of an incident that requires the temporary rerouting of 9-1-1 calls due to man-made or natural disasters.

[(23)] [(34)] Contract for 9-1-1 Services (Contract)--An agreement executed between the regional planning commission (RPC) and the Commission that establishes the responsibilities of each of the parties regarding the use of all 9-1-1 fees, equipment and data.

[(24)] [(35)] Controlled Asset--Items and components that have a cost of \$5,000 or less and have a useful life of at least one year.

[(36)] Controlled Equipment--Items and components whose cost is less than \$5,000 and have a useful life of at least one year.}]

[(37)] Customer Premise Equipment (CPE)--The terminal equipment at a PSAP or secondary answering location.}]

[(25)] [(38)] Database Maintenance [Plan]--A [plan that identifies a cost effective] program for the maintenance of the regional MSAG [addressing in a county]. [For regional planning commissions (RPC) this plan is part of a regional plan as described by Chapter 771 of the Texas Health and Safety Code.}]

[(26)] [(39)] Digital Map--A computer generated and stored data set based on a coordinate system, which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and location information, data sets related to emergency service provider boundaries, as well as other associated data.

[(27)] [(40)] Emergency Communications District (District)--A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a District created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, D, or E.

[(41)] Emergency Notification Services--A service or system that provides local governmental entities the ability to notify citizens of a warning or alert regarding emergency situations which may jeopardize human life or property. Emergency notification services can utilize multiple methods of transmission to include voice technologies via telephone systems; data technologies via facsimile; e-mail; Internet services and paging systems; and broadcast technologies via television, radio, or Internet.}]

[(42)] Emergency Service Number (ESN)--A number stored by the selective router/switch used to route a call to a particular PSAP.}]

[(43)] Emergency Service Routing Digits (ESRD)--As defined in J-Std-034, an ESRD is a digit string that uniquely identifies a base station, cell sector, or sector. This number may also be a network routable number (but not necessarily a dialable number).}]

[(28)] [(44)] Enhancements--Infrastructure, equipment, personnel and services funded for certain counties as defined in Commission Rule 251.3, Use of Revenue in Certain Counties, that would not otherwise be approved for allocation of 9-1-1 funds as part of the regional strategic plan.

[(29)] Equipment Maintenance--The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.

[(45)] ESRK--Emergency Service Routing Key (ESRK) is a 10-digit routable, but not necessarily dialable, number translated from a cell sector identifier at the SCP that is used by the selective router to route wireless 9-1-1 calls to the appropriate PSAP. The ESRK is also the search-key for the mating of data that is provided to a PSAP by different paths, such as via the voice path and ALI data path. In daily use, the term ESRK is used to distinguish operational environments where the routing digits are assigned on a per destination PSAP basis as opposed to a per origination cell sector basis, which is the strict technical definition of an ESRD.}]

[(30)] [(46)] FCC--The Federal Communications Commission.

[(47) FCC Order--The Federal Communications Commission Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 94-102, released July 26, 1996, and as amended by subsequent decisions.]

[(48) Geographic Information System (GIS)--A system of computer hardware, software and procedures used to store, analyze, and display geospatial data and related tabular data in a geographic context to solve complex planning and management problems in a wide variety of applications.]

[(49) Graphical Display of Location Information--The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call, or inquiry, that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations, and the ability to zoom, pan and show other related geographical information or features.]

[(50) Host ALI Records--Templates from the ALI Database that identify the Cell Site location and the Call Back Number of the Wireless End User making a 9-1-1 call.]

[(51) Hybrid CAS/NCAS--This method for wireless E9-1-1 call delivery uses a combination of CAS and NCAS techniques to deliver the location and call back numbers to a PSAP. The MSC sends the location and call back information to a selective router using the standard CAS interface defined in J-Std-034. The selective router then uses an NCAS approach to deliver the information to a PSAP. That is, the selective router sends the location and call back information to the wireline emergency services database and the caller's call back number, or MDN, to the PSAP. The MDN is then used as a key to retrieve the cell/tower information for PSAP display.]

[(31) [(52)] Intangible Assets--Includes items such as labor for PSAP room prep, electrical wiring costs, labor for the assembly of equipment, or any costs for the delay or transfer of equipment.

[(32) [(53)] Integrated Services--Primary or third party computer software applications that have been installed or implemented on an existing 9-1-1 call taking position's workstation that were not designed or intended for the workstation at the time of purchase or not loaded onto the workstation by the equipment vendor when originally installed at the PSAP.

[(33) [(54)] Integrated TDD--the TDD has been incorporated into the CPE equipment.

[(34) [(55)] Interlocal Agreement--A contract cooperatively executed between local governments or other political subdivisions of the state to perform administrative functions or provide services, relating to 9-1-1 telecommunications.

[(56) J-Std-034--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), to provide the delta changes necessary to various existing standards to accommodate the Phase I requirements. This standard identifies that the interconnection between the mobile switching center (MSC) and the 9-1-1 selective router/switch is via:]

[(A) An adaptation of the Feature Group-D Multi Frequency (FG-D protocol), or]

[(B) The use of an enhancement to the Integrated Services Digital Network User Part (ISUP) Initial Address Message (IAM) protocol. In this protocol, the caller's location is provided as a ten-digit number referred to as the emergency services routing digits (ESRDs). The protocol NENA-03-002, Recommendation for the Implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP, is the corollary of J-Std-034 FG-D protocol.]

[(57) J-Std-036--A standard, jointly developed by the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS), that defines standards for E9-1-1 service relating to CAS, NCAS wireless E9-1-1 solutions, and to make provision for introduction of location determination technology for Phase II delivery of wireless E9-1-1 calls. Additional proposed solutions such as Hybrid are not referenced. Standards include, but are not limited to, required data elements, and signaling protocols. J-Std-034 addresses E9-1-1 Phase I, and J-Std-036 addresses E9-1-1 Phase II.]

[(58) Local Exchange Carrier (LEC)--A Telecommunications Carrier (TC) under the state/local Public Utilities Act that provides local exchange telecommunications services. Also known as Incumbent Local Exchange Carriers (ILECs), Alternate Local Exchange Carriers (ALECs), Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Certified Local Exchange Carriers (CLECs), and Local Service Providers (LSPs).]

[(59) [(59)] Local Government--A county, municipality, public agency, or any other political subdivision that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services and/or addressing functions.

[(60) [(60)] Local Monitoring Plan--The RPC schedule for monitoring all interlocal contracts, 9-1-1 funded activities, equipment, PSAPs, and subcontractors.

[(61) Local Number Portability (LNP)--A process by which a telephone number may be reassigned from one Local Exchange Carrier to another.]

[(62) Maintenance--The preservation and upkeep of 9-1-1 equipment in order to insure that it continues to operate and perform at a level comparable to that exhibited at its initial acquisition.]

[(63) Maintenance Plan--A plan that identifies a cost effective program for the maintenance of 9-1-1 equipment. For regional planning commissions this plan is part of a regional plan as described by Chapter 771 of the Texas Health and Safety Code.]

[(64) Master Street Addressing Guide (MSAG)--A database maintained by the local government agencies or regional planning commissions which lists all street segments and their associated address information for the purpose of validating and updating telephone number records. An MSAG record consists of: street directional (when applicable); street name; house number low and high ranges; whether the range is odd ranges (O) even (E) or contains both odd and even ranges (B); the associated community name; state; Emergency Service Number (ESN); and telephone exchange. MSAG records will meet NENA standards or a statewide standard as determined by the Commission.]

[(65) Mobile Directory Number (MDN)--A 10-digit dialable directory number used to call a Wireless Handset.]

[(66) Mobile Switching Center (MSC)--A switch that provides stored program control for wireless call processing.]

[(67) NENA--The National Emergency Number Association, a not-for-profit corporation founded to further the national goal of "One Nation, One Number."]

[(68) NENA 02-010--A standard set of formats and protocols for the Automatic Location Identification (ALI) data exchange between service providers and Enhanced 9-1-1 systems, developed by the NENA Data Standards Subcommittee.]

~~[(69) NENA 03-002--A standard, or technical reference, developed by the NENA Network Technical Committee, to provide recommendations for the implementation of Enhanced Multi Frequency (MF) Signaling, E9-1-1 Tandem to PSAP. The J-Std-034 FG-D protocol is the corollary protocol of NENA 03-002.]~~

~~[(70) Non-Callpath Associated Signaling (NCAS)--This method for wireless E9-1-1 call delivery delivers routing digits over existing signaling protocol, including commonly applied CAMA trunking into and out of selective routers or SS7 into selective routers. The voice call is set up using the existing interconnection method that the wireline company uses from an end office to the router and from the router to the PSAP. The ANI delivered with the voice call is an emergency service routing key (ESRK), not a MDN. Where SS7 signaling (or other facility with 20-digit signaling capability) is in place, the MDN as well as the ESRK may be delivered over the voice path. All data, including the MDN and cell sector that receives the call, is delivered to the PSAP via the data path within the ALI record.]~~

~~(37) [(71)] Non-Recurring Cost (NRC)--The amount of cost identified as a one-time cost associated with 9-1-1 equipment, network, or services implementation. The cost may be inclusive of an outright purchase, or may be the initial cost for leased goods or ongoing services.~~

~~(38) [(72)] Paging Systems--A radio system capable of transmitting tone, digital, and/or voice signals to small receiving devices designed to be carried by an individual.~~

~~[(73) Phase I E9-1-1 Service Area(s)--Those geographic portions of a 9-1-1 Governmental Entity Jurisdiction in which WSP is licensed to provide Service.]~~

~~(39) [(74)] Power Backup--Power provided by an uninterrupted power source (UPS) or [a] generator in the event regular utility services are interrupted.~~

~~(40) Primary PSAP--PSAP to which 9-1-1 calls are routed directly from a central office/selective routing tandem.~~

~~[(75) Private Switch Emergency Service (PS9-1-1)--A service offering which enables either ANI or ALI to be provided to a PSAP when a 9-1-1 call originates from Direct Inward Dialing (DID) stations served by a private switch, e.g., a PBX. PS9-1-1 is offered to governmental entities such as RPCs, Districts, counties, and cities that provide emergency response services.]~~

~~(41) [(76)] Public Safety Answering Point (PSAP)--A [24-hour communications] facility equipped and staffed to receive [established as an answering location for] 9-1-1 calls [originating within a given service area], as further defined in Applicable Law [applicable law Texas Health and Safety Code, Chapters 771 and 772].~~

~~[(A) Primary PSAP (P-PSAP)--A facility equipped and staffed with the ability to extend, receive, answer, transfer or relay to the appropriate public safety response agencies 9-1-1 calls. The P-PSAP must be in service 24 hours per day, 7 days per week, 365 days per year.]~~

~~[(B) Secondary PSAP (S-PSAP)--A PSAP to which 9-1-1 calls are transferred or relayed from a P-PSAP, which may operate less than 24 hours per day, but which has the ability to extend, receive, answer, transfer or relay 9-1-1 calls. Emergency Operations Centers or other facilities that are used as PSAPs during PSAP failure or overflow situations (such as a training facility) may also be referred to as Secondary PSAPs.]~~

~~[(C) Remote PSAP--Equipment located at an emergency service responder's facility that is capable of conveying call~~

~~information via printer, fax, or telephone and used as a means of call delivery.]~~

~~[(D) Mobile PSAP--An answering location, usually temporary, for receiving 9-1-1 calls originating within a given service area which is capable of and intended to be easily moved or relocated.]~~

~~[(77) Redundant Equipment and Services--Duplication of components running in parallel to increase reliability.]~~

~~(42) [(78)] Regional Planning Commission (RPC)--A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments.~~

~~(43) [(79)] Regional Strategic Plan--A plan developed by each RPC for the establishment and operation of 9-1-1 service throughout the region that the RPC serves. The service and contents must meet the standards established by the Commission.~~

~~(44) [(80)] Recorders--Devices that capture and retain sound, including but not limited to the following:~~

~~(A) Voice Loggers--A device that records sound on a permanent source for later review.~~

~~(B) Instant Recall Recorders--A device that records and temporarily stores calls for immediate review.~~

~~(45) Remote PSAP--A PSAP to which 9-1-1 calls are routed from a central office/selective routing tandem through centralized host backroom equipment.~~

~~(46) Secondary PSAP--A PSAP to which 9-1-1 calls are transferred from a Primary or Remote PSAP.~~

~~[(81) Security Devices--Devices whose use is specific to the protection of 9-1-1 systems from intentional damage.]~~

~~[(82) Selective Router--A switching office placed in front of a set of PSAPs that allows the networking of 9-1-1 calls based on the ESRD assigned to the call.]~~

~~[(83) Selective Router Tandem (SR)--A switching office placed in front of a set of PSAPs that allows the routing of 9-1-1 calls to the proper PSAP.]~~

~~[(84) Service Control Point (SCP)--A centralized database system used for, among other things, wireless Phase I E9-1-1 Service applications. It specifies the routing of 9-1-1 calls from the Cell Site to the PSAP. This hardware device contains special software and data that includes all relevant Cell Site locations and Cell Sector Identifiers.]~~

~~[(85) Service Provider--A company providing a telephone service or a commercial mobile radio service (CMRS) to a service user.]~~

~~(47) [(86)] Stand-Alone TDD--A separate TDD unit that is not integrated into the CPE.~~

~~(48) [(87)] Standard Wireless E9-1-1 Service Agreement--The standard Phase I and/or Phase II Wireless E9-1-1 Service Agreement, as applicable, provided by the Commission and available on the Commission's web site.~~

~~(49) [(88)] Strategic Plan--As part of a regional plan, a document identifying 9-1-1 equipment and related activity, by strategic plan component, required to support plan levels of 9-1-1 service within a defined area of the state. The strategic plan normally covers at least a three year planning period, and specifically projects 9-1-1 implementation costs and revenues associated with the above including equalization surcharge requirements.~~

(50) [(89)] Surge Protection Devices--Devices designed to protect sensitive electronic equipment by preventing excessive electrical power from reaching and damaging such equipment.

[(90) Tangible Assets--Only those items that are tangible may be considered for capital costs. Tangible assets include, but are not limited to, any capital equipment such as the ANI/ALI Controllers, answering position units, integrated workstations, addressing computers, GIS workstations, plotters, or any other technical piece of equipment.]

[(91) TDD--The acronym for Telecommunication Device for the Deaf. Other interchangeable acronyms accepted are TTY (Teletypewriter) or TT (Text Telephone).]

[(92) TDD Detectors--Monitor incoming trunks for TDD tones. Upon detection, a response sequence begins. A built-in recording provides a repeating voice announcement, "TDD Call," to the telecommunicator. A message is sent to the TDD caller (such as "9-1-1 Please Hold"). The telecommunicator then utilizes a TDD to communicate.]

(51) [(93)] Unaddressed County--A county in Texas, which has not completely assigned new addresses and provided all new or changed addresses to telephone companies under a county addressing process.

(52) [(94)] Uniform Grant Management Standards (UGMS)--As developed by the Governor's Office of Budget, Planning and Policy under the authority of Chapter 783 of the Texas Government Code.

[(95) Uninitialized Call--Any wireless E9-1-1 call from a wireless handset which, for any reason, has either not had service initiated or authenticated with a legitimate WSP.]

[(96) Uninterrupted Power Source (UPS)--Equipment that is designed to provide a constant power source for electronic systems. Capable of operating independently, for a designated period of time, should public or emergency electrical power sources fail.]

(53) [(97)] Useful Life--The period of time that a piece of capital equipment can consistently and acceptably fulfill its' service or functional assignment.

[(98) Vendor--A third party used by either the 9-1-1 Governmental Entity or WSP to provide services.]

(54) [(99)] Wireless 9-1-1 Call--A call made by a wireless end user utilizing a WSP wireless network, initiated by dialing "9-1-1" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

(55) [(100)] Wireless E9-1-1 Phase I Service--The service by which the wireless service provider (WSP) delivers to the designated PSAP the wireless end user's call back number and cell site/sector information when a wireless end user has made a 9-1-1 call, as contracted by the 9-1-1 administrative entity.

(56) [(101)] Wireless E9-1-1 Phase II Service--The service by which the WSP delivers to the designated PSAP the wireless end user's call back number, cell site/sector information, as well as X, Y (longitude, latitude) coordinates to the accuracy standards set forth in the FCC Order.

(57) [(102)] Wireless Service Provider (WSP)--The wireless service provider and all its affiliates, collectively referred to as "WSP."

(58) [(103)] WSP Subscribers--Wireless telephone customers who subscribe to the Service of WSP and have a billing address within a 9-1-1 Governmental Entity Jurisdiction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702344

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 305-6930



## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### CHAPTER 379. FAMILY VIOLENCE PROGRAM

#### SUBCHAPTER A. DEFINITIONS

The Texas Health and Human Services Commission (HHSC) proposes the repeal and replacement of Subchapter A, §379.1, concerning Definitions for programs serving adult victims (and their children) of family violence. This repeal and replacement will affect contracting, fiscal, board, facility, service delivery, and program administration issues related to providing shelter, non-residential and special project services.

#### Background and Justification

HHSC has the responsibility of administering the Family Violence Program. HHSC has taken the initiative to reformat the Family Violence Program rules. As part of that initiative, HHSC has also updated and clarified the rules as necessary. HHSC has determined that these changes require the repeal of Subchapter A, Definitions. HHSC proposes to repeal Subchapter A and incorporate most of the language of current Subchapter A into new Subchapter A.

In addition to these technical changes, HHSC proposes to add one new definition, Section 379.1(26) (relating to Dating Violence). The addition of this definition is intended to correspond with the addition of the definition of dating violence to Section 71.0021, Texas Family Code, (relating to Dating Violence).

#### Section-by-Section Summary

In addition to making minor revisions to the language of the current rule and to reformatting the rule, HHSC proposes to add one new definition, §379.1(26) (relating to Dating Violence).

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the period the proposed rules are in effect there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs. There are no anticipated fiscal implications due to these rule revisions.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with the rules, as they will not be required to alter their business prac-

tices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Laurie Shannon, Manager for the Family Violence Program, has determined that for each year the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing these rules, will be a consistent, reliable, and cost-effective mode of service delivery to victims (and their children) of family violence.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposed rules may be submitted to Dr. Sujata Desai, Program and Policy Specialist in Family Services, Texas Health and Human Services Commission, P.O. Box 12668, Mailcode 2010, Austin, Texas 78711-2668, by fax to (512) 206-4556, or by e-mail to sujata.desai@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### 1 TAC §379.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeal is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeal affects the Texas Human Resources Code, Chapter 51 and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposed repeal.

#### §379.1. What do certain words and terms in the chapter mean?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702297

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



#### 1 TAC §379.1

#### Statutory Authority

The new rule is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rule affects the Texas Human Resources Code, Chapter 51 and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposed new rule.

#### §379.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Civil justice system--A network of courts and legal processes that enforce, restore, or protect private and personal rights.

(2) Community education--The efforts or activities performed to increase public awareness about family violence and the availability of services for victims of family violence.

(3) Cooperation with criminal justice officials--Making efforts on behalf of victims of family violence to:

(A) establish ongoing working relationships with the local criminal justice system, including but not limited to law enforcement, prosecutors, the courts, and probation and parole departments; and

(B) educate the local criminal justice system about family violence and the need for policies that ensure safety for victims of family violence and hold batterers accountable.

(4) Cooperative living agreement--An agreement between the shelter and residents that promotes health, safety, and daily shelter operations.

(5) Criminal justice system--A network of court and legal processes that deals with the enforcement of criminal laws. A crime is an action or omission in violation of law and is an offense against the state.

(6) Crisis call hotline--A telephone number answered 24 hours a day, every day of the year by trained family violence center or special nonresidential project volunteers, employees, or Commission-approved service contractors who provide victims of family violence with:

(A) immediate intervention through safety planning;

(B) understanding and support;

(C) information about shelter center services; and

(D) referrals to other services.

(7) Education arrangements for children--Face-to-face services that result in a resident, nonresident, or program participant child complying with the compulsory attendance requirements found in the Texas Education Code. It does not include transportation.



(8) Emergency medical care--Assistance in responding to any urgent medical situation for a resident, nonresident, program participant, or victim of family violence being considered for acceptance to or accessing family violence services.

(9) Emergency transportation--Providing or arranging transportation:

(A) to and from emergency medical facilities for a resident, nonresident, program participant, or victim of family violence; or

(B) from a safe place to a shelter for victims of family violence needing shelter within the centers service area.

(10) Family violence--An act by a member of a family or household against another member of the family or household that is:

(A) intended to result in physical harm, bodily injury, or assault;

(B) a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, but does not include defensive measures to protect oneself; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

(11) Intervention services--Face-to-face services for a resident, nonresident, or program participant child or adult victim of family violence that:

(A) include:

(i) safety planning;

(ii) understanding and support;

(iii) advocacy;

(iv) case management;

(v) information and education; and

(vi) resource assistance;

(B) are available daily for shelter residents; and

(C) are available during the center's or project's hours of operation for nonresidents or program participants.

(12) Legal assistance--Face-to-face services to the resident, nonresident, or program participant that include:

(A) identifying individual legal needs;

(B) explaining legal rights and options;

(C) providing support and accompaniment in the pursuit of those options;

(D) assisting in safety planning; and

(E) providing advocacy.

(13) Limited English Proficiency (LEP)--A term describing individuals who do not speak English as their primary language and who have limited ability to read, speak, write or understand English.

(14) Nonresident--An adult or child victim of family violence who receives services from a Commission-funded shelter center without receiving shelter.

(15) Nonresidential center--A Commission-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive nonresidential services to victims of family violence as described in the Service Delivery section of the Commission Family Violence Program Nonresidential Center Provider Manual.

(16) Program participant--An adult or child victim of family violence who receives services from a Commission-funded nonresidential center or special nonresidential project.

(17) Referral system to existing community services--An organized process for providing information and referring residents, nonresidents, or program participants to existing community resources, including but not limited to:

(A) medical care;

(B) legal representation;

(C) protective services for abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;

(D) resource assistance;

(E) public assistance;

(F) counseling and treatment services;

(G) children's services; and

(H) other appropriate family violence services.

(18) Resident--An adult or child victim of family violence who is admitted to a Commission-funded shelter.

(19) Satellite shelter--An additional shelter operated by a shelter center, located in a different city that meets the criteria stated in these sections.

(20) Shelter center--A Commission-funded program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of family violence as described in the Service Delivery section of the Commission Family Violence Program Shelter Center Provider Manual.

(21) Special nonresidential project--A project that:

(A) is operated by a public or private nonprofit organization; and

(B) provides at least one specialized family violence service in addition to all required core services as described in the Service Delivery section of the Commission Family Violence Special Nonresidential Project Provider Manual.

(22) Standards--The minimum Commission requirements as stated in this chapter.

(23) Training and employment information--Providing information and referrals to residents, nonresidents, or program participants about employment training and employment opportunities, either directly or through formal arrangements with other organizations.

(24) Twenty-four-hour-a-day shelter--A Commission-funded shelter center facility that provides access, admittance, and temporary emergency residence for victims of family violence 24 hours a day, every day of the year.

(25) Victim of family violence--Includes:

(A) an adult member of a family or household who is subjected to an act of family violence;

(B) a member of the household of the adult described in subparagraph (A) of this paragraph, other than the member of the household who commits the act of family violence, including an act of emotional abuse;

(C) victims not directly served by a Commission family violence provider;

(D) a member of the family or household who may have been subjected to sexual abuse by a batterer; and

(E) a victim of dating violence.

(26) Dating violence--An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is:

(A) intended to result in physical harm, bodily injury, assault, or sexual assault;

(B) a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

(27) Volunteer recruitment and training program--A process for soliciting a diverse group of people from the community to work as non-paid staff and providing them with information about family violence and services for victims of family violence through a structured orientation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702298

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## SUBCHAPTER B. SHELTER CENTERS

The Texas Health and Human Services Commission (HHSC) proposes the repeal and replacement of Subchapter B, Shelter Centers. Specifically, HHSC proposes the repeal of Division 1, Board of Directors, §§379.101 - 379.110 and new §§379.101 - 379.104; the repeal of Division 2, Contract Standards, §§379.201 - 379.224 and new §§379.201 - 379.207; the repeal of Division 3, Fiscal Management §§379.301 - 379.316 and new §379.301 and §379.302; the repeal of Division 4, Personnel, §§379.401 - 379.418 and new §§379.401 - 379.407; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.501 - 379.512 and new §§379.501 - 379.510; the repeal of Division 6, Program Administration, §§379.601 - 379.642, 379.650, 379.651 and new §§379.601 - 379.635; the repeal of Division 7, Service Delivery, §§379.701 - 379.726 and new §§379.701 - 379.719. This subchapter defines contracting, fiscal, personnel, facility, board, service delivery, and program administration rules specific to programs that provide shelter services to victims of family violence. New rules are also

proposed in this subchapter to address satellite shelter center requirements.

### Background and Justification

HHSC has the responsibility of administering the Family Violence Program. As part of this authority, HHSC has taken the initiative to reformat the Family Violence Program rules. As part of that initiative, HHSC has also updated and clarified the rules as necessary. HHSC has determined that these changes require the repeal of Subchapter B. HHSC proposes to repeal Subchapter B, Shelter Centers and to incorporate most of the language of current Subchapter B into new Subchapter B.

In addition to these technical changes and clarifications, HHSC has added new requirements of satellite shelter centers. Stakeholder input has been obtained from Commission-funded programs, and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence.

### Section-by-Section Summary

Most of the requirements of the current rules have been incorporated into the Family Violence Shelter contract ("Contract"). HHSC has made minor clarifications throughout Subchapter B.

Section 379.207 was repealed and new language was added to Sections §379.203 (relating to Satellite Shelter Requirements) and §379.205 (relating to Funding Waivers) to address new satellite shelter requirements.

Sections 379.505 and 379.508 have been repealed and the language in those sections has been incorporated into proposed §379.503 (relating to satellite shelter Security Systems).

The language in §379.725 and §379.726 has been repealed and the text has been incorporated into proposed §379.612 (relating to Termination of Services).

Two new rules, §379.702 and §379.703 have been added to clarify data collection procedures.

### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the period the proposed rules are in effect there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with the rules, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

### Public Benefit

Laurie Shannon, Manager for the Family Violence Program, has determined that for each year the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing these rules, will be a consistent, reliable, and cost-effective mode of service delivery to victims (and their children) of family violence.

### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposed rules may be submitted to Dr. Sujata Desai, Program and Policy Specialist in Family Services, Texas Health and Human Services Commission, P.O. Box 12668, Mailcode 2010, Austin, Texas 78711-2668, by fax to (512) 206-4556, or by e-mail to sujata.desai@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

### DIVISION 1. BOARD OF DIRECTORS

#### 1 TAC §§379.101 - 379.110

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Human Resources Code, Chapter 51 and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed repeals.

§379.101. *What is the stewardship function of the shelter center's board of directors?*

§379.102. *What are the responsibilities of the shelter center's board of directors?*

§379.103. *What documents must the shelter center's board of directors maintain?*

§379.104. *What must the shelter center's bylaws contain?*

§379.105. *What must the shelter center board include in its recruitment procedures?*

§379.106. *What information does the shelter center need to provide to new board members?*

§379.107. *What must the shelter center's board handbook include?*

§379.108. *How often should the shelter center board of directors receive training?*

§379.109. *What training must the shelter center's board of directors receive?*

§379.110. *What responsibilities do board members have regarding confidentiality?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702299

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



#### 1 TAC §§379.101 - 379.104

#### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.101. Fiscal Oversight and Accountability.

The board must:

(1) Ensure that the center operates in a manner that keeps the organization's mission and purpose focused without becoming involved in day-to-day operations;

(2) Hire the executive director.;

(3) As a whole, or the center's finance committee, regularly review actual revenue and expenditures and compare them with budgeted revenue and estimated costs;

(4) Review and approve programs and budgets; and

(5) Review and approve policies for the organization's operation.

§379.102. Shelter Center's Board Handbook.

The board members must be given a handbook that contains, at a minimum, the following:

(1) Board member job description;

(2) Current list of board members with mailing addresses and telephone numbers;

(3) Organization's mission statement;

(4) Organization's bylaws and a copy of the letter granting 501(c)(3) status;

(5) List of all committees, including appointed board members and assigned staff;

(6) Committee descriptions;

(7) The organization policies;

(8) Organizational chart;

(9) History of the organization;

(10) List of program services and a brief description of each program;

(11) Current budget, including funding sources and sub-contractors;

(12) Brief description of contract provisions with attorneys, auditors, or other professionals;

(13) Basic information about family violence; and

(14) Brief history of the Texas Battered Women's Movement.

§379.103. Board of Director's Training.

At least once during their term of service, each board member must receive training on the following:

(1) An explanation of the center's mission, philosophy, and a brief history;

(2) An explanation of the dynamics of family violence that includes its causes and effects;

(3) A description of the organization's current programs, provided by program staff;

(4) A review of the organization's policies and clarification of any changes made during the year;

(5) An explanation of how the center is funded and future funding projections;

(6) A discussion, presented by the board chair or a member of the executive committee, of the following:

(A) The board's role and responsibilities related to legal and fiscal accountability;

(B) Meetings and attendance requirements;

(C) Committee duties, structure, and assignments; and

(D) Fund-raising and public relations responsibilities;

(7) An explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;

(8) An explanation of the working relationship between the board and staff, including, but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; and

(9) An update on any changes made in the Texas Non-Profit Corporation Act.

§379.104. Confidentiality.

Each board member must:

(1) Be familiar with the Commission's rules and the center's policies related to confidentiality; and

(2) Provide written assurance to the center that she or he will not use the position to obtain or access confidential resident or nonresident information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702300

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 2. CONTRACT STANDARDS

### 1 TAC §§379.201 - 379.224

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.201. *Who is eligible to apply for a shelter center contract?*

§379.202. *What factors will the Texas Department of Human Services (DHS) consider in awarding contracts?*

§379.203. *How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted shelter center?*

§379.204. *Can an organization reapply for funding if the shelter center contract has been terminated for failure to perform the obligations?*

§379.205. *Can the shelter center apply for a special nonresidential project contract?*

§379.206. *How can the shelter center qualify for satellite shelter funding?*

§379.207. *What are the requirements of the satellite shelter?*

§379.208. *What is the process to renew the shelter center contract?*

§379.209. *What types of documentation must the shelter center maintain?*

§379.210. *How long must the shelter center keep the documents?*

§379.211. *Who may inspect, monitor, or evaluate the shelter center's resident and nonresident records, financial books, and supporting documents that pertain to services provided?*

§379.212. *What documents should the shelter center have available for a monitoring visit?*

§379.213. *What should the shelter center do after it receives a Texas Department of Human Services (DHS) monitoring report?*

§379.214. *Does the shelter center need to have an internal monitoring system?*

§379.215. *Does the shelter center have to maintain a copy of the Texas Department of Human Services Family Violence Program Shelter Center Provider Manual?*

§379.216. *How much of the shelter center's funding can the Texas Department of Human Services (DHS) provide?*

§379.217. *Is it possible to obtain a waiver to the Texas Department of Human Services (DHS)-prescribed percentage of the shelter center's operating budget?*

§379.218. *How can the shelter center request a variance or waiver?*

§379.219. *Can the shelter center receive a funding percentage waiver more than once?*

§379.220. *What is the process to amend the shelter center contract?*

§379.221. *What is the process to revise the shelter center budget?*

§379.222. *What is the responsibility of the shelter center with regard to subcontracts?*

§379.223. *What must a shelter center do if there is a change in corporate control?*

§379.224. *What can happen if the shelter center does not comply with the rules?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702301

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.201 - 379.207

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.201. *Special Project Contract.*

The center may apply for a special project contract; however, the proposed services cannot be the same as those required for the shelter center contract.

#### §379.202. *Satellite Shelter Funding.*

In order to qualify for satellite shelter funding, the center must:

- (1) be a current Commission contractor in good standing;
- (2) develop and implement written policies and procedures that describe the relationship between the center and the satellite shelter;

- (3) Ensure the satellite shelter meets all of the Satellite Shelter Requirements concerning §379.207 of this title (relating to More than One Funding Percentage Waiver).

#### §379.203. *Satellite Shelter Requirements.*

The Satellite Shelter must:

- (1) Have a freestanding shelter building in which residents are sheltered;

- (2) Serve nonresidents from the satellite service area;
- (3) Be in an area that prohibits resident and nonresident access to shelter center services because of difficulty or distance;

- (4) Provide the same services as a 24-hour-a-day shelter;

- (5) Not be located in the same city as the center;

- (6) have local community representation on center's board of directors]

- (7) Have local funding and local volunteer support; [and]

- (8) Have been in operation for at least one year preceding the fiscal year for which funding is requested;

- (9) Have housed residents in the past year; and

- (10) Have twenty-four hour, on-site staff or volunteer coverage if there are residents in the shelter.

#### §379.204. *Internal Monitoring System.*

The center must have a written internal monitoring system to evaluate:

- (1) The quality of the center's required resident and non-resident services;

- (2) The accuracy of the fiscal and programmatic documentation; and

- (3) Compliance with the policies and procedures specified in the center's contract with the Commission.

#### §379.205. *Funding Waivers.*

The Commission may waive the applicable percentage when all of the following conditions are met:

- (1) the center's anticipated income for the contract year is expected to increase or decrease by more than 10% relative to the actual income received during the previous contract year; and

- (2) the change in the center's budget has resulted from:

- (A) an increase in the state appropriation for center services; or

- (B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part.

#### §379.206. *Requesting a Variance or Waiver.*

- (a) To request a waiver from the maximum prescribed funding percentage, the center must:

- (1) submit a written request and appropriate documentation to the Commission state office demonstrating the center's efforts to raise funds compared to its budget; and

- (2) agree in writing to receive technical assistance as designated by the Commission.

- (b) To request a variance to or waiver from any other requirement in this subchapter, the board must submit a written request to the Commission on forms prescribed by the Commission and must document compelling reasons the requirement cannot be met.

#### §379.207. *More than One Funding Percentage Waiver.*

A center may not receive more than two funding waivers in consecutive contract terms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702302  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: July 22, 2007  
For further information, please call: (512) 424-6900

## DIVISION 3. FISCAL MANAGEMENT

### 1 TAC §§379.301 - 379.316

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.301. *What are the accounting system requirements for the shelter center?*

§379.302. *Is the shelter center required to have a fidelity bond?*

§379.303. *What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?*

§379.304. *How should the shelter center handle in-kind contributions?*

§379.305. *How should the shelter center handle cash contributions?*

§379.306. *How should the shelter center document required cash/in-kind match?*

§379.307. *How does the shelter center allocate overhead costs to its Texas Department of Human Services contract?*

§379.308. *What must the shelter center do in order to receive payment from the Texas Department of Human Services (DHS)?*

§379.309. *What costs are eligible for reimbursement under the shelter center contract?*

§379.310. *Can the shelter center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?*

§379.311. *What is the quarterly report?*

§379.312. *When is the quarterly report due?*

§379.313. *What is the annual report?*

§379.314. *When is the annual report due?*

§379.315. *What are the shelter center's audit requirements?*

§379.316. *When is the shelter center audit due?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702303  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: July 22, 2007  
For further information, please call: (512) 424-6900

### 1 TAC §379.301, §379.302

#### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.301. Accounting System Requirements.

The center must maintain an accounting system and records that:

(1) records revenue and expenditures using generally accepted accounting principles;

(2) includes a chart of accounts that lists all accounts by an assigned number;

(3) contains a general ledger and subsidiary ledgers;

(4) maintains supporting documentation for all revenue and expenditures, including but not limited to:

(A) receipts or vouchers for revenue;

(B) bank statements;

(C) canceled checks;

(D) deposit slips;

(E) approved invoices;

(F) receipts;

(G) leases;

(H) contracts;

(I) time sheets;

(J) inventory; and

(K) cost allocation worksheets;

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry accounting system: either cash, accrual, or modified accrual.

#### §379.302. Cash/In-kind Match.

The center must develop written internal policies and procedures to accurately document the cash/in-kind match required by funding sources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702304  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: July 22, 2007  
For further information, please call: (512) 424-6900

## DIVISION 4. PERSONNEL

## 1 TAC §§379.401 - 379.418

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.401. *Must the shelter center comply with federal personnel laws?*

§379.402. *What additional personnel policies and procedures must the shelter center have?*

§379.403. *Who needs a copy of the shelter center's personnel handbook?*

§379.404. *Are there any requirements for the shelter center employees' personnel files?*

§379.405. *Where should the shelter center keep its employee payroll information?*

§379.406. *What must the shelter center do to ensure confidentiality of specific employee information?*

§379.407. *What should the shelter center address in its policy regarding confidentiality of employee records?*

§379.408. *What should the shelter center address in its drug-free workplace policies?*

§379.409. *What should the shelter center address in its recruitment policies?*

§379.410. *What should the shelter center address in its interviewing and hiring policies?*

§379.411. *Does the shelter center need written job descriptions for its employee positions?*

§379.412. *Should the shelter center identify its employee positions as exempt or non-exempt?*

§379.413. *What are the shelter center requirements for new employee orientation?*

§379.414. *Does the shelter center need to provide specific job training?*

§379.415. *Are there any requirements for specific program training for shelter center employees?*

§379.416. *What access should the shelter center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?*

§379.417. *Should the shelter center evaluate employee performance?*

§379.418. *Can the shelter center use probationary periods for its employees?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702305

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.401 - 379.407

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

### §379.401. Personnel Policies.

The center must have written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

(1) Contract labor;

(2) Conflict of interest;

(3) Domestic violence in the workplace;

(4) Nepotism;

(5) Hiring Process that is uniform for all candidates for a particular position and includes, but is not limited to:

(A) Job posting;

(B) Job descriptions with essential job functions;

(C) Interviewing systems; and

(D) Reference checking and responding to reference checking;

(6) Rules of conduct;

(7) Hours and days of operation;

(8) Employee benefits, including accrual of leave;

(9) Employees' right to access their personnel files;

(10) Written and oral employee orientation, initial training, and employee development;

(11) Confidentiality requirements of employee records;

(12) Employee evaluation;

(13) Involuntary and voluntary termination; and

(14) Grievances.

§379.402. Personnel Files.

The center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) Employment application or resume;
- (2) Job descriptions;
- (3) Signed acknowledgment of confidentiality agreement;
- (4) Signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) All performance evaluations;
- (6) Documentation of orientation, initial training, and employee development;
- (7) Any status or classification change;
- (8) All disciplinary actions, if any; and
- (9) Letters of praise or criticism, if any.

§379.403. Drug and Alcohol Policy.

If under the jurisdiction of the Drug-Free Workplace Act, the center must develop a written drug and alcohol policy that states at least the following:

- (1) Illegal use or illegal possession of alcohol or drugs is prohibited while on duty;
- (2) A belief in a treatment and recovery approach;
- (3) A stated concern for employees and their recovery efforts;
- (4) Programs and systems for assistance; and
- (5) A statement of confidentiality.

§379.404. New Employee Orientation and Training.

(a) The center must provide an oral orientation about the organization for all new employees within the first two days of employment.

(b) Within two weeks of the day of employment, all new employees must receive basic oral or written information regarding:

- (1) Dynamics of family violence;
- (2) A brief history of the Texas Battered Women's Movement; and
- (3) A brief summary of current Texas laws that address family violence issues.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) Crisis intervention;
- (2) Hotline skills, if applicable;
- (3) Peer counseling techniques;
- (4) Risk assessment, safety planning, and legal options for victims of family violence;
- (5) The centers' policies and procedures;
- (6) Sensitivity to cultural diversity;
- (7) Training on applicable civil rights laws and regulations;
- (8) All required documentation and procedures as related to resident and nonresident issues; and
- (9) Confidentiality.

§379.405. Children's Advocate.

The center must designate at least one staff person, either paid or volunteer, to act as a children's advocate.

§379.406. Legal Advocate.

The center must:

- (1) Designate at least one staff person, either paid or volunteer, to act as a legal advocate; and
- (2) Provide access to relevant trainings to assure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence in each county where services are provided.

§379.407. Volunteer Coordinator.

The center must designate an employee or volunteer to act as the volunteer coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702306

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS**

### **1 TAC §§379.501 - 379.512**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.501. What facility codes must the shelter center meet?*

*§379.502. Must the shelter center's facilities comply with the Americans with Disabilities Act (ADA)?*

*§379.503. What are the additional facility requirements for the 24-hour-a-day shelter center?*

*§379.504. What are the shelter center's requirements for preparing, providing, and serving food to residents?*

*§379.505. Must the shelter center have a security system?*

*§379.506. What security policies and procedures must the shelter center have?*



§379.507. *What safety policies and procedures does the shelter center need to have for delivering services to children?*

§379.508. *Should there always be employees or volunteers at the shelter?*

§379.509. *Should there always be employees or volunteers at the satellite shelter facility?*

§379.510. *What health and hygiene policies and procedures must the shelter center follow?*

§379.511. *What hygiene items must the shelter center provide to residents?*

§379.512. *What regulations regarding smoking must the shelter center follow?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702307

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.501 - 379.510

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.501. Facility Requirements for the 24-Hour-a-Day Shelter Center.

The center facility must have:

- (1) a kitchen and eating area;
- (2) a group living area;
- (3) bathroom facilities, including toilets, lavatories, and bathing facilities;
- (4) sleeping facilities;
- (5) a private meeting area for individual and group services;
- (6) adequate safe space for children;
- (7) a safe indoor play space equipped with toys in good repair and arts and craft supplies;
- (8) a safe outdoor play area equipped with toys in good repair;
- (9) basic furnishings that are clean and in good repair, including:
  - (A) beds and bed linens;
  - (B) cribs;
  - (C) dining room tables;

(D) chairs;

(E) highchairs;

(F) a place to store clothes, such as drawers or closets;

(10) clearly marked exits; and

(11) a first-aid kit in all center facilities that is accessible to employees, volunteers, and residents.

§379.502. Preparing, Providing, and Serving Food to Residents.

The center must:

(1) ensure food preparation, including storage of food, serving of food, and dining areas, is adequate and safe;

(2) have written procedures to ensure residents are provided with at least three well-balanced meals or ingredients for well-balanced meals and an additional two snacks a day for children;

(3) have written procedures that provide for alternative access to essential food and food preparation when the center's kitchen is closed;

(4) make reasonable, ADA compliant dietary accommodations, for residents who require special medical diets, as specified by their health care provider;

(5) not require residents to use food stamps to purchase shelter meals; and

(6) when providing meals or food items, consider the diverse needs of the population of the center's service area.

§379.503. Security System.

Centers and satellite shelters must have security systems that are operational 24 hours a day. The security system may include, but is not limited to, an alarm system, special lighting, dead bolts, and agreements with local law enforcement.

§379.504. Security Policies and Procedures.

Centers and satellite shelters must have written policies and procedures to promote the safety and security of residents, nonresidents, employees, and volunteers. These policies and procedures must address:

(1) intruders on the property, such as a batterer;

(2) assaults;

(3) bomb threats;

(4) threatening telephone calls;

(5) power outages;

(6) evacuations; and

(7) natural disasters (e.g., hurricanes, tornadoes, floods, fires).

§379.505. Shelter Center and Satellite Shelter Staffing.

Centers and satellite shelters must have at least one employee or volunteer on-site continuously when residents are staying in the shelter, except if using safe homes.

§379.506. Providing Hygiene Items to Residents.

The center must provide residents with daily access to basic personal hygiene items. When providing personal hygiene items, the center must consider the diverse needs of the population of the shelter service area.

§379.507. Types of Facilities Allowed by the Commission for a 24-hour-a-Day Shelter.

A 24-hour-a-day shelter can be located in the following types of facilities:

- lence;
- (1) a facility that exclusively serves victims of family violence;
  - (2) a series of safe homes; or
  - (3) a designated section of another kind of emergency shelter.

§379.508. Exceptions to Allowable Types of Facilities for a 24-Hour-a-Day.

(a) The center can request an exception to the allowable types of facilities for a 24-hour-a-day shelter by submitting a written waiver request that addresses the factors of safety and service delivery to the Commission.

(b) A waiver will be granted if the Commission approves the request.

§379.509. Additional Requirements if a Shelter Center Uses a Series of Safe Homes.

If the center uses a series of safe homes for shelter, it must:

(1) have a written policy that addresses in-depth screening of each home, including the suitability of the house and host family or individual; and

(2) meet the same standards as a regular 24-hour-a-day shelter except:

(A) it is not required to have 24-hour employee or volunteer coverage; and

(B) any material the Commission requires to be posted can instead be placed in a notebook that is clearly labeled and visibly available for residents to read.

§379.510. Using a Motel as a Type of Shelter.

Motels cannot be used exclusively as a shelter facility for a 24-hour-a-day shelter but can be used for overflow or used in outlying counties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702308

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 6. PROGRAM ADMINISTRATION**

### **1 TAC §§379.601 - 379.642, 379.650, 379.651**

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices

of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.601. *What services must the shelter center provide to victims of family violence?*

§379.602. *Can the shelter center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?*

§379.603. *Who is eligible for services in the shelter center?*

§379.604. *When is a family violence victim who is less than 18 years old eligible to receive 24-hour-a-day shelter?*

§379.605. *When is a family violence victim who is less than 18 years old eligible to receive nonresidential services?*

§379.606. *What federal and state laws must the shelter center follow when determining eligibility?*

§379.607. *What criteria can the shelter center use to determine eligibility for services?*

§379.608. *Can the shelter center ever deny services to an otherwise eligible individual?*

§379.609. *What should the shelter center do when its services are at capacity?*

§379.610. *Must the shelter center provide access to services for people with limited English proficiency?*

§379.611. *Is the shelter center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?*

§379.612. *What must the shelter center include in its general confidentiality policy?*

§379.613. *What information must the shelter center provide adult residents and nonresidents regarding confidentiality?*

§379.614. *Who needs to sign confidentiality agreements and where should the shelter center keep these agreements?*

§379.615. *What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the shelter center?*

§379.616. *What is required in the confidentiality training provided to employees, board members, interns and direct service volunteers?*

§379.617. *What information should the shelter center keep in resident or nonresident files?*

§379.618. *What policies and procedures must the shelter center have regarding entries in a resident or nonresident file?*

§379.619. *Is the shelter center required to give a resident or nonresident access to her or his file?*

§379.620. *What must the shelter center do if a resident or nonresident contests an entry in her or his file?*

§379.621. *What controls must the shelter center maintain over resident and nonresident files?*

§379.622. *When can the shelter center release resident or nonresident information?*

§379.623. *What must the shelter center include in its written release of resident or nonresident information document?*

§379.624. *What written procedures must the shelter center have regarding court orders?*

§379.625. *Must the shelter center notify a victim of family violence when a court order affects the individual or the individual's records?*

§379.626. *Must the shelter center have written policies and procedures for the retention and destruction of documentation?*

§379.627. *What types of facilities does the Texas Department of Human Services allow for a 24-hour-a-day shelter?*

§379.628. *How can the shelter center request an exception to the allowable types of facilities for a 24-hour-a-day shelter?*

§379.629. *What additional requirements apply if the shelter center uses a series of safe homes?*

§379.630. *Can the shelter center use a motel as a type of shelter?*

§379.631. *What must the shelter center do if it has any disruption in its ability to provide services?*

§379.632. *Is there a maximum length of stay for shelter center residents?*

§379.633. *What responsibility does the shelter center have to inform all residents and nonresidents of their rights?*

§379.634. *Must the shelter center develop a plan regarding cooperation with criminal justice officials?*

§379.635. *What responsibility does the shelter center have to provide community education?*

§379.636. *What methods must the shelter center use to provide community education?*

§379.637. *What is required for the shelter center's volunteer program?*

§379.638. *How much recruitment must the shelter center do for volunteers?*

§379.639. *When recruiting volunteers, what laws or codes must the shelter center follow?*

§379.640. *How often must the shelter center offer training for volunteers?*

§379.641. *What training must the shelter center provide to direct service volunteers?*

§379.642. *What training must the shelter center provide to non-direct service volunteers?*

§379.650. *Are there any limitations to providing shelter or care to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?*

§379.651. *Are there any limitations to providing nonresidential services to family violence victims who are less than 18 years old who are not accompanied by a parent or legal guardian, are not legally emancipated, are not married, or have not been married?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702309

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

## 1 TAC §§379.601 - 379.635

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.601. Required Services.

At a minimum, the center must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51.

#### §379.602. Charging for Services.

The center cannot charge or solicit contributions or donations in return for Commission-contracted services.

#### §379.603. Eligibility.

Victims of family violence as defined in the Human Resources Code, Chapter 51, and adults subjected to sexual and/or emotional abuse by their batterers are eligible for services at the center.

#### §379.604. Federal and State Laws Regarding Eligibility.

When determining eligibility for services, the center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88 - 352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93 - 112);
- (4) Americans with Disabilities Act of 1990 (Public Law 101 - 336);
- (5) Age Discrimination Act of 1975 (42 U.S.C. §§6101 - 6107);
- (6) Commission regulations regarding civil rights; and
- (7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS.

#### §379.605. Eligibility Criteria.

The center must have written resident and nonresident eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services;
- (3) gender; and/or sexual orientation.

#### §379.606. Denial of Services.

The center can deny services to an otherwise eligible victim of family violence if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of shelter staff and residents;
- (2) apply equally to all people; and

(3) comply with the laws and regulations described in this rule.

§379.607. Eligibility of Previously Involuntarily Terminated Residents or Nonresidents.

The center must have written procedures for taking into consideration the safety of a victim for whom services were previously involuntarily terminated and who is currently requesting services.

§379.608. Access to Services for People with Limited English Proficiency.

The center must:

(1) serve people with limited English proficiency and take reasonable steps to assure meaningful access to the program; and

(2) have and follow written procedures for the access and delivery of services to people with limited English proficiency.

§379.609. Services at Capacity.

The center must have and follow written referral procedures for helping victims of family violence obtain other temporary shelter if the primary method of providing shelter is full.

§379.610. 24-Hour-a-Day Shelter Services to Family Violence Victims less than 18 Years Old.

(a) The center can only provide 24-hour-a-day shelter to a victim of family violence less than 18 years old if:

(1) the minor victim is:

(A) accompanied by a parent or legal guardian;

(B) legally emancipated;

(C) married or has been married;

(D) experiencing an emergency that constitutes an immediate danger to the physical health or safety of the minor or the minor's child or children; or

(2) the center is licensed to provide residential childcare.

(b) If the minor victim is not accompanied by a parent or legal guardian, is not legally emancipated, is not married, or has not been married, then:

(1) The Texas Family Code states that emergency shelter must not be provided after the 15th day since shelter has begun, unless:

(A) the center receives consent from the minor victim to continue shelter or care, if the minor victim:

(i) is 16 years old or older;

(ii) resides separately and apart from the minor victim's parent, managing conservator, or guardian, regardless of the duration of the residence; and

(iii) manages her or his own financial affairs, regardless of the source of income; or

(B) is unmarried and pregnant or the parent of a child; or

(C) the minor victim has qualified for financial assistance under the Human Resources Code, Chapter 31 and is on the waiting list for housing assistance.

(2) The center may rely on the minor victim's written statement containing the grounds on which the minor victim has the capacity to consent to emergency care.

§379.611. Nonresidential Services for a Family Violence Victim who is Less than 18 Years Old.

(a) Criteria. The center can provide nonresidential services to a victim of family violence less than 18 years old if:

(1) The minor victim is:

(A) accompanied by a parent or legal guardian;

(B) is legally emancipated;

(C) is married or has been married; or

(D) is experiencing an emergency situation that constitutes an immediate danger to the physical health or safety of the minor or the minor's child or children; or

(2) The center has:

(A) parental or legal guardian consent to provide the minor with nonresidential services; or

(B) the center complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.

(b) Emergency Services. The contractor may provide emergency nonresidential services for only fifteen days if the minor victim does not meet the criteria under subsection (a)(1)(A) - (C) of this section, unless:

(1) the center receives consent, as provided in subsection (c) of this section, from the minor victim to continue services; or

(2) the minor victim has qualified for financial assistance under the Human Resources Code, Chapter 31 and is on the waiting list for housing assistance.

(c) Consent. The minor victim may consent to emergency nonresidential services, after the 15th day,

(1) if the minor victim:

(A) is 16 years old or older; and

(i) resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence; and

(ii) manages the minor's own financial affairs, regardless of the source of income; or

(B) the minor victim is unmarried and pregnant or the parent of a child; and

(2) The center may rely on the minor victim's written statement containing the grounds on which the minor victim has the capacity to consent to emergency services.

§379.612. Termination of Services.

(a) The center must have written policies that:

(1) outline the reasons and behaviors for which services can be terminated;

(2) address how current and former residents and nonresidents can appeal terminations and file grievances with the center;

(3) apply equally to all people; and

(4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, §504 of the Rehabilitation Act, the Age Discrimination Act of 1975, and other applicable laws and regulations.

(b) When terminating services to the resident or nonresident the center must:

(1) provide written notice to the resident or nonresident of the termination;

(2) provide written notice of the right to file a grievance with the center and the explanation of the grievance procedure; and

(3) upon request of the resident or nonresident, provide contact information for the Health and Human Services Commission Family Violence Program for complaint purposes.

§379.613. General Confidentiality Policy.

The center must develop a written general confidentiality policy that provides:

(1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child residents and nonresidents, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program;

(3) the parameters of what must be held confidential and by whom;

(4) the limits of confidentiality under the law;

(5) a designation of custodian of the records; and

(6) procedures for:

(A) retention and destruction of records;

(B) responses to court orders;

(C) release of information;

(D) reports of abuse or suspected abuse of:

(i) children;

(ii) the elderly; and

(iii) people with disabilities;

(E) requests of information under the Public Information Act;

(F) maintenance of records; and

(G) access to records that comply with confidentiality provisions in state and federal law.

§379.614. Confidentiality Information for Adult Residents and Non-residents.

The center must provide to adult residents and nonresidents in writing at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the resident's or nonresident's case files and records;

(4) the center's policy and practices on confidentiality;

(5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) children;

(B) the elderly; and

(C) people with disabilities;

(6) the center's policy for responding to court orders and requests for information under the Public Information Act;

(7) the center's policy for release of information;

(8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a resident or nonresident terminates services.

§379.615. Confidentiality Agreements.

The center must have all employees, volunteers, board members, student interns, and adult residents and nonresidents who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, resident, or nonresident leaves the center. These agreements must be placed:

(1) in the personnel files of the employees;

(2) with the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, residents, and nonresidents.

§379.616. Confidentiality Training.

The center must provide training to employees, board members, interns, and direct service volunteers on:

(1) confidentiality policies and procedures;

(2) why confidentiality is important for victims of family violence; and

(3) how information is recorded.

§379.617. Information in Resident or Nonresident Files.

The center must limit the information kept in files to information necessary for:

(1) statistical and funding purposes;

(2) establishing goals for intervention and advocacy;

(3) documenting the need for and delivery of services; and

(4) protecting the liability of the center and its employees, volunteers, and board members.

§379.618. Policies and Procedures Regarding Entries in a Resident or Nonresident File.

(a) The center must have written policies and procedures regarding entries into a resident or nonresident file that require:

(1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a resident or nonresident file does not include the names of other residents or nonresidents; and

(3) if the center provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

(b) The center must have written policies and procedures to ensure a resident or nonresident has access to all information in her or his case file.

(c) If a resident or nonresident contests a case file entry, the center must either:

(1) remove the entry from the file; or

(2) if the entry is not removed, note in the case file that the resident or nonresident believes the entry to be inaccurate.

§379.619. Maintaining Control over Resident and Nonresident Files. The custodian of the records, designated by the executive director, is responsible for maintaining control over the resident and nonresident records, including the court's access to the records. Resident and nonresident records must be kept secure and must not be removed from the center's premises without the written permission of the custodian of the records.

§379.620. Release of Resident or Nonresident Information.

(a) The center may release information, orally or in writing, only if it first obtains a written release of information from the resident or nonresident.

(b) Regardless of whether a written release of information from a resident or nonresident is obtained, the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) children;

(2) the elderly; and

(3) people with disabilities.

§379.621. Release of Resident or Nonresident Information Document.

The release of information document must include the:

(1) name of no more than one person or organization to which the information is being released;

(2) specific information to be released;

(3) beginning and ending dates the release is effective, not to exceed the resident's stay and not to exceed the nonresident's active length of services;

(4) date and the signatures of the resident or nonresident and the employee or volunteer; and

(5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§379.622. Court Orders.

Individuals (current or former employees, volunteers, board members, or student interns) who receive a court order regarding any program records, residents, nonresidents, shelter center activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§379.623. Procedures Regarding Court Orders.

The center must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order;

(2) on whom court orders may be served, such as the custodian of records;

(3) which attorney(s) should be contacted;

(4) who will discuss the subpoena with the resident or nonresident or other victim of family violence, and at what point; and

(5) the circumstances under which records may be released.

§379.624. Notification of Court Orders.

The center must:

(1) notify a resident when a court order affects the individual or the individual's records; and

(2) attempt, whenever possible, to notify a nonresident, hotline caller, or other victim of family violence when a court order affects the individual or the individual's records.

§379.625. Policies and Procedures for the Retention and Destruction of Documentation.

The center must have written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to all residents and nonresidents, including but not limited to:

(1) case notes, case content, and case files;

(2) staff-to-staff communications; and

(3) documentation required by other funders.

§379.626. Disruption in Providing Services.

(a) The center must have written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be reported immediately to the Commission.

(c) After the initial oral notification, the center must submit to the Commission a written description of the disruption and how services will be or were maintained.

§379.627. Maximum Length of Stay for Shelter Center Residents.

(a) The Commission does not impose a maximum length of stay.

(b) If the center does have a maximum length of stay, it must have a written policy explaining its necessity and the length of the maximum stay.

§379.628. Resident and Nonresident Rights.

The center must:

(1) give written rights to all residents and nonresidents; and

(2) post resident and nonresident rights in a visible area within all center facilities.

§379.629. Resident's Belongings.

(a) Shelter centers must have written policies and procedures regarding the security of residents' belongings.

(b) Residents must be informed in writing of:

(1) how long personal belongings will be stored if they leave the 24-hour-a-day shelter; and

(2) what will happen to their items if they do not pick them up by the deadline.

§379.630. Cooperation with Criminal Justice Officials.

The center must develop a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

(1) establishing an ongoing working relationship with local criminal justice officials;

(2) encouraging the justice system to develop policies and procedures that are responsive to the needs of victims of family violence and enhance collaboration among justice system agencies and service providers;

(3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;

(4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support from the criminal justice system; and

(5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§379.631. Community Education.

(a) The center must have a written policy about community education that:

(1) ensures community education is provided to as many diverse groups as possible in each county where services are provided;

(2) focuses part of the community education on informing victims of family violence of existing family violence services; and

(3) comply with §379.610 of this title (relating to 24-Hour-A-Day Shelter Services to Family Violence Victims Less than 18 Years Old).

(b) The center must:

(1) use presentations;

(2) distribute written materials; and

(3) establish and use media contacts.

§379.632. Volunteer Program.

The center must have and follow written policies and procedures regarding:

(1) recruitment methods that reach diverse groups of people from the communities of each county where services are provided; and

(2) screening, training, supervising, evaluating, and terminating volunteers, including offering training for volunteers at least twice a year.

§379.633. Volunteer Recruitment.

The center must have an ongoing recruitment program for volunteers to help with the center's programs that complies with:

(1) civil rights laws that allow qualified people an opportunity to volunteer; and

(2) the Human Resources Code, Chapter 51, which states that the center must find support for the center through volunteer work, especially volunteer work by people who have been victims of family violence.

§379.634. Content of Training for Direct Service Volunteers.

The center must develop training for direct service volunteers that includes, but is not limited to:

(1) A brief history of the Texas Battered Women's Movement;

(2) The need for and benefit of shelter services;

(3) The dynamics of family violence;

(4) A brief summary of current Texas laws that address family violence issues;

(5) Crisis intervention;

(6) Hotline skills, if applicable;

(7) Peer counseling techniques;

(8) Risk assessment and safety planning;

(9) The center policies and procedures;

(10) The organization's mission and philosophy;

(11) Confidentiality;

(12) Legal options for victims of family violence;

(13) Sensitivity to cultural diversity;

(14) Community resources;

(15) The need for community systems to be responsive to the needs of victims of family violence; and

(16) Training on applicable civil rights laws and regulations.

§379.635. Content of Training for Non-Direct Service Volunteers.

The center must provide non-direct service volunteers with:

(1) a basic orientation of the duties they perform; and

(2) at a minimum, basic information about the organization's mission, philosophy, and policies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702310

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 7. SERVICE DELIVERY**

### **1 TAC §§379.701 - 379.726**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.701. *What services must the shelter center provide?*

§379.702. *What requirements must the shelter center meet for the crisis call hotline?*

§379.703. *What crisis call hotline procedures must the shelter center have?*

§379.704. *Can the shelter center use caller ID on the crisis call hotline?*

§379.705. *Can the shelter center subcontract the answering of the crisis call hotline?*

§379.706. *What procedures must the shelter center have for delivery of Texas Department of Human Services-contracted services?*

§379.707. *What information must the shelter center cover in the resident's orientation?*

§379.708. *What must the shelter center do to promote cooperative living in the shelter?*

§379.709. *What information must the shelter center cover in the non-resident's orientation?*

§379.710. *What kind of intervention services must the shelter center provide to adult residents and nonresidents?*

§379.711. *Who can provide the shelter center intervention services?*

§379.712. *How often should the shelter center provide intervention services?*

§379.713. *Is the shelter center allowed to incorporate religion into the intervention services?*

§379.714. *Is the shelter center required to help each resident and nonresident develop an individual service plan?*

§379.715. *What are the shelter center requirements regarding group intervention?*

§379.716. *What are the requirements for the shelter center regarding delivery of children's direct services?*

§379.717. *What kind of intervention services must the shelter center provide to children who reside at the shelter?*

§379.718. *What is the shelter center's responsibility regarding educational services for children of adult residents?*

§379.719. *What is the shelter center's responsibility regarding emergency medical services?*

§379.720. *What policies and procedures must the shelter center have regarding residents and their medications?*

§379.721. *What legal assistance services must the shelter center provide?*

§379.722. *What are the requirements for the shelter center regarding legal assistance?*

§379.723. *What training and employment services must the shelter center provide?*

§379.724. *Must the shelter center maintain a referral system?*

§379.725. *What policies must the shelter center have regarding termination of resident and nonresident services?*

§379.726. *What information about termination of services must the shelter center provide to residents and nonresidents?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702311

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



**1 TAC §§379.701 - 379.719**

## Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

### §379.701. Shelter Center Services.

The center must provide, at a minimum, access to the following services, directly, by referral, or through formal arrangements with other agencies, and have written procedures regarding these services as described in this subchapter:

- (1) 24-hour-a-day shelter;
- (2) a crisis call hotline available 24 hours a day;
- (3) emergency medical care;
- (4) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans
- (5) emergency transportation;
- (6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options
- (7) information about educational arrangements for children;
- (8) information about training for and seeking employment; and
- (9) a referral system to existing community services.

### §379.702. Data Collection.

(a) The center will regularly report complete and accurate data through the data collection system approved by the Commission, using service definitions in the Shelter Center Provider Manual. Data submission is due by the deadline specified in the contract. The Commission reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that the center may not be able to provide services due to a natural disaster or fire, the affected center will consult with the Commission regarding whether exceptions to data reporting deadlines and data collection service definitions should be made.

### §379.703. Promoting Cooperative Living in the Shelter.

The center must:

- (1) have a written cooperative living agreement that outlines what can be reasonably expected from the staff and residents, including the center's and residents' responsibilities;
- (2) post this agreement in a visible area; and
- (3) hold house management meetings regularly.

### §379.704. Crisis Call Hotline.

The center must:



(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number in all telephone books within the center's service area and on the center's website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;

(6) provide Caller ID blocks on the center's numbers for outgoing calls to residents, nonresidents, and other victims of family violence, which may only be unblocked with permission from the resident, nonresident, or victim of family violence;

(7) ensure the screening process complies with all state and federal laws if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;

(10) ensure the center is able to provide meaningful access to people with limited English proficiency; and

(11) If the center uses caller ID or any other technology that establishes a record of calls on the hotline, the center must:

(A) ensure there will not be a breach of confidentiality to third parties;

(B) limit access to the records generated by these devices.

#### §379.705. Subcontracting the Crisis Call Hotline.

If the center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Commission and must have a written policy that addresses how the subcontractor meets the Commission's training requirements for all direct service staff and will ensure immediate access to the center's 24-hour-a-day services.

#### §379.706. Medical Care.

The center is not required to provide or pay for emergency medical care, but must:

(1) Maintain a current list of emergency medical care resources that can provide medical services for victims of family violence.

(2) Have written procedure about providing or arranging for emergency transportation to and from emergency medical facilities for shelter residents or victims of family violence being considered for acceptance as residents.

#### §379.707. Residents' Medications.

The center must have a written policy and procedures regarding all prescribed and non-prescribed medications used by residents, including but not limited to:

(1) self-administration of drugs and medications;

(2) methods for safekeeping of drugs and medications; and

(3) a system that ensures adult residents have direct or immediate access to their own and their children's medication.

#### §379.708. Resident's Orientation.

The center must ensure orientation is provided orally and in writing within 16 hours, is documented, and includes but is not limited to:

(1) explanation of services available;

(2) cooperative living agreement;

(3) length of stay;

(4) termination policy;

(5) residents' rights;

(6) nondiscrimination statement;

(7) grievance procedures;

(8) safety and security procedures, including medication;

(9) confidentiality and limits of confidentiality; and

(10) waivers of liability.

#### §379.709. Nonresident's Orientation.

The center must ensure orientation is provided orally and in writing, is documented and includes but is not limited to:

(1) explanation of services available;

(2) termination policy;

(3) nonresident's rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality; and

(8) waivers of liability.

#### §379.710. Service Plan.

The center must develop a written individual service plan with each resident and nonresident that reflects the resident's or nonresident's particular needs.

#### §379.711. Group Intervention.

The center must:

(1) provide at least one weekly support group for adult residents and nonresidents and

(2) not mandate resident and nonresident attendance to weekly support groups.

#### §379.712. Religion and Intervention Services.

If the center provides direct intervention family violence services, it must not use state funds for inherently religious activities, must not promote any one religion, and must not require residents to participate in religious groups or to use religious materials.

#### §379.713. Delivery of Children's Direct Services.

The center must:

(1) have services available that are specific to meet the needs of children;

(2) provide transportation or make transportation arrangements for child residents who attend school;

(3) provide or arrange for school supplies and clothing for child residents;

(4) provide a support group for child residents at least weekly, when age appropriate;

(5) provide a recreational or social group for child residents at least weekly; and

(6) offer information and referral services for nonresident children if nonresident services are offered to the child's parent.

§379.714. Intervention Services for Children Residing in the Shelter.

The center must provide intervention services that are age-appropriate and include:

(1) procedures ensuring new child residents and/or parent residents have face-to-face contact with the designated children's staff and that this contact is documented;

(2) strategies to enhance safety;

(3) understanding and support, including:

(A) addressing needs identified by the victim; and

(B) building self-esteem, problem solving, and recognizing that the child is not responsible for the violence; and

(4) information about:

(A) identifying possible support systems;

(B) available resources; and

(C) dynamics of family violence.

§379.715. Safety Policies and Procedures for Delivering Services to Children.

(a) The center must develop and endorse written nonviolent disciplinary policies and procedures regarding child residents and non-residents, including policies and procedures for adult residents and non-residents, employees, and volunteers who provide services to children.

(b) The center must have written policies and procedures to:

(1) ensure the safety of children in its facilities; and

(2) maintain the safety of children when employees or volunteers take children on outings.

§379.716. Texas Department of Family and Protective Services' (DFPS) Childcare Licensing Regulation.

(a) The center is not subject to DFPS child care licensing if the center provides services only to resident children and the childcare is provided at the same location as the shelter.

(b) If the center is subject to DFPS child care licensing regulations, the center must have written policies and procedures to ensure compliance with those rules and regulations.

§379.717. Legal Assistance Services.

The center must:

(1) maintain a current list of local criminal justice agencies and contact people in each county where services are provided;

(2) offer support and accompaniment to residents and non-residents in their pursuit of legal options;

(3) ensure legal advocacy services are available and specific to the needs of victims of family violence; and

(4) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§379.718. Educational Services for Children of Adult Residents.

(a) The center must inform the adult resident about educational services for her or his children.

(b) At the resident's request:

(1) help the resident make arrangements for the child's continued education;

(2) accompany the resident to school meetings regarding the child's special needs; and

(3) act as a liaison to the school regarding provisions in a protective order that may directly affect the child's safety.

(c) The center must have written policies and procedures regarding its educational services for children.

§379.719. Training and Employment Services.

The center must provide or arrange the following for residents and non-residents:

(1) clothing for:

(A) training;

(B) interviews; and

(C) employment, except for positions that require specific uniforms;

(2) assistance preparing employment and training program applications and resumes; and

(3) information on job-seeking skills.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702312

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS

The Texas Health and Human Services Commission (HHSC) proposes the repeal and replacement of Subchapter C, Special Nonresidential Projects. Specifically, HHSC proposes the repeal of Division 1, Board of Directors, §§379.801 - 379.804 and new §§379.801 - 379.803; the repeal of Division 2, Contract Standards, §§379.901 - 379.917 and new §§379.901 - 379.903; the repeal of Division 3, Fiscal Management, §§379.1001 - 379.1015 and new §§379.1001 and §§379.1002; the repeal of Division 4, Personnel, §§379.1101 - 379.1108 and new §§379.1101 - 379.1103; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.1201 - 379.1209 and new §§379.1201 and §§379.1202, the repeal of Division 6, Program Administration, §§379.1301 - 379.1326 and new §§379.1301 - 379.1321; the repeal of Division 7, Service Delivery, §§379.1401 - 379.1410 and new §§379.1401 - 379.1408. This subchapter defines contracting, fiscal, personnel, facility, board, service

delivery, and program administration rules specific to family violence programs that provide enhanced services and community education to marginalized populations. Some rules that have moved to contract are being deleted.

#### Background and Justification

HHSC has the responsibility of administering the Family Violence Program. HHSC has taken the initiative to reformat the Family Violence Program rules. As part of that initiative, HHSC has also updated and clarified the rules as necessary. HHSC has determined that these changes require the repeal of Subchapter C, Special Nonresidential Projects. HHSC has incorporated most of the language of current Subchapter C into new Subchapter C.

In addition to these technical changes, HHSC has added clarifying language throughout the subchapter. Stakeholder input has been obtained from Commission-funded programs, and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence.

#### Section-by-Section Summary

Most of the requirements in the current rules have been incorporated in the Family Violence Special Nonresidential Projects contract ("Contract") and the remaining rules have been renumbered. In addition, HHSC has made minor clarifications throughout Subchapter C.

The requirements of two of the rules §379.1409 and §379.1410 proposed for repeal have been incorporated into proposed §379.1309, Termination of Services.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the period the proposed rules are in effect there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with the rules, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Laurie Shannon, Manager for the Family Violence Program, has determined that for each year the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing these rules, will be a consistent, reliable, and cost-effective mode of service delivery to victims (and their children) of family violence.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the

economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposed rules may be submitted to Dr. Sujata Desai, Program and Policy Specialist in Family Services, Texas Health and Human Services Commission, P.O. Box 12668, Mailcode 2010, Austin, Texas 78711-2668, by fax to (512) 206-4556, or by e-mail to [sujata.desai@hhsc.state.tx.us](mailto:sujata.desai@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## DIVISION 1. BOARD OF DIRECTORS

### 1 TAC §§379.801 - 379.804

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Human Resources Code, Chapter 51 and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.801. What is the stewardship function of the special nonresidential project contractor's board of directors?*

*§379.802. What process should the special nonresidential project contractor's board of directors follow to analyze the finances?*

*§379.803. When should the board of directors be notified about a contract award for a Texas Department of Human Services (DHS) special nonresidential project?*

*§379.804. What responsibilities do members of the special nonresidential project board of directors have regarding confidentiality?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702313

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.801 - 379.803

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.801. Fiscal Oversight and Accountability.

The board must regularly review actual revenue and expenditures and compare them to budgeted revenue and estimated costs.

§379.802. Notification Regarding Special Nonresidential Projects.

The executive director or designee must give the board of directors a description of the Commission contract within three months of the contract award, including program, administrative, and fiscal oversight responsibilities.

§379.803. Confidentiality.

Each board member must:

(1) be familiar with the Commission's rules and the contractor's policies related to confidentiality; and

(2) if the project provides direct services, provide written assurance to the project that she or he will not use the position to obtain or access confidential program participant information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702314

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 2. CONTRACT STANDARDS

### 1 TAC §§379.901 - 379.917

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.901. *Who is eligible to apply for a special nonresidential project contract?*

§379.902. *How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted special nonresidential project?*

§379.903. *Can an organization reapply for funding if the special nonresidential project contract has been terminated for failure to perform the obligations?*

§379.904. *What is the process to renew the special nonresidential project contract?*

§379.905. *What types of documentation must the special nonresidential project contractor maintain and keep in an accessible location at all times?*

§379.906. *How long must the special nonresidential project contractor keep the documents?*

§379.907. *Who may inspect, monitor, or evaluate the special nonresidential project contractor's program participant records, financial books, and supporting documents that pertain to services provided?*

§379.908. *What documents should the special nonresidential project contractor have available for a monitoring visit?*

§379.909. *What should the special nonresidential project contractor do after it receives a Texas Department of Human Services (DHS) monitoring report?*

§379.910. *Does the special nonresidential project contractor need to have an internal monitoring system?*

§379.911. *Does the special nonresidential project contractor have to maintain a copy of the Texas Department of Human Services Family Violence Special Nonresidential Project Provider Manual?*

§379.912. *How can the special nonresidential project contractor request a variance or waiver?*

§379.913. *What is the process to amend the special nonresidential project contract?*

§379.914. *What is the process to revise the special nonresidential project budget?*

§379.915. *What is the responsibility of the special nonresidential project contractor with regard to subcontracts?*

§379.916. *What must the special nonresidential project contractor do if there is a change in corporate control?*

§379.917. *What can happen if the special nonresidential project contractor does not comply with the rules?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702315

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

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**1 TAC §§379.901 - 379.903**

**Statutory Authority**

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.901. Internal Monitoring System.

The contractor must have a written internal monitoring system to evaluate the following:

- (1) quality of the special project's services;
- (2) accuracy of the fiscal and programmatic documentation; and
- (3) compliance with the policies and procedures specified in the contract.

§379.902. Requesting a Variance or Waiver.

To request a variance to or waiver from a specific requirement in this subchapter, the contractor's board must submit a written request to the Commission on forms prescribed by the Commission and must document compelling reasons the requirement cannot be met.

§379.903. Primary Services to an Unserved or Underserved Population.

If the special nonresidential project's purpose is to provide services to a particular population, it must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals; however, if an appropriate referral cannot be made, the contractor must provide the requested services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702316

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

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**DIVISION 3. FISCAL MANAGEMENT**

**1 TAC §§379.1001 - 379.1015**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

**Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1001. What are the accounting system requirements for the special nonresidential project contractor?*

*§379.1002. What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?*

*§379.1003. How should the special nonresidential project handle in-kind contributions?*

*§379.1004. How should the special nonresidential project contractor handle cash contributions?*

*§379.1005. How should the special nonresidential project contractor document required cash/in-kind match?*

*§379.1006. How does the special nonresidential project contractor allocate overhead costs to its Texas Department of Human Services contract?*

*§379.1007. What must the special nonresidential project contractor do in order to receive payment from the Texas Department of Human Services (DHS)?*

*§379.1008. What costs are eligible for reimbursement under the special nonresidential project contract?*

*§379.1009. Can the special nonresidential project's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?*

*§379.1010. What are the quarterly reports?*

*§379.1011. When are the quarterly reports due?*

*§379.1012. What are the annual reports?*

*§379.1013. When are the annual reports due?*

*§379.1014. What are the special nonresidential project contractor's audit requirements?*

*§379.1015. When is the special nonresidential project audit due?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702317

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

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**1 TAC §§379.1001, §379.1002**

**Statutory Authority**

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1001. Accounting System Requirements.

The contractor must maintain an accounting system and records that:

- (1) records revenue and expenditures using generally accepted accounting principles;
- (2) includes a chart of accounts that lists all accounts by an assigned number;
- (3) contains a general ledger and subsidiary ledgers;
- (4) maintains supporting documentation for all revenue and expenditures, including, but not limited to:
  - (A) receipts or vouchers for revenue;
  - (B) bank statements;
  - (C) canceled checks;
  - (D) deposit slips;
  - (E) approved invoices;
  - (F) receipts;
  - (G) leases;
  - (H) contracts;
  - (I) time sheets;
  - (J) inventory; and
  - (K) cost allocation worksheets;
- (5) identifies all funding sources and expenditures by separate fund type; and
- (6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§379.1002. Cash/In-kind Match.

The contractor must develop written internal policies and procedures to accurately document the cash/in-kind match required by funding sources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702318

Steve Aragón

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Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 4. PERSONNEL**

### **1 TAC §§379.1101 - 379.1108**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas*

*Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1101. Must the special nonresidential project contractor comply with federal personnel laws?*

*§379.1102. What should the special nonresidential project contractor address in its drug-free workplace policies?*

*§379.1103. What should the special nonresidential project contractor address in its disabilities in the workplace policies?*

*§379.1104. Does the special nonresidential project contractor need written job descriptions for its employee positions?*

*§379.1105. Should the special nonresidential project contractor identify its employee positions as exempt or non-exempt?*

*§379.1106. Should the special nonresidential project contractor staff receive training?*

*§379.1107. What are the requirements for specific program training for special nonresidential project employees?*

*§379.1108. What access should the special nonresidential project contractor provide to the Texas Department of Human Services Family Violence Program Special Nonresidential Project Provider Manual?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702319

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



### **1 TAC §§379.1101 - 379.1103**

#### **Statutory Authority**

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1101. Drug-Free Workplace Policy.

If subject to the Drug-Free Workplace Act, the contractor must develop a written drug and alcohol policy that states at least the following:

(1) illegal use or illegal possession of alcohol or drugs is prohibited while on duty;

(2) a belief in a treatment and recovery approach;

(3) a stated concern for employees;

(4) programs and systems for assistance; and

(5) a statement of confidentiality.

§379.1102. New Employee Orientation and Training.

(a) The contractor must provide initial training for direct service employees funded by the Commission or employees supervising these employees. The training must include:

(1) hotline skills, if applicable;

(2) basic crisis intervention techniques;

(3) peer counseling techniques, if applicable;

(4) the dynamics of family violence;

(5) risk assessments, safety planning, and legal options for victims of family violence;

(6) confidentiality;

(7) sensitivity to cultural diversity;

(8) program participant eligibility;

(9) applicable civil rights laws and regulations; and

(10) all required documentation and procedures related to program participant issues.

(b) Documentation of all initial training must be included in the employees' personnel files, or if the contractor does not maintain personnel files, in separate administrative files.

§379.1103. Personnel Policies.

The center must have written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

(1) contract labor;

(2) conflict of interest;

(3) domestic violence in the workplace;

(4) nepotism;

(5) hiring process that is uniform for all candidates for a particular position and includes, but is not limited to:

(A) job posting;

(B) job descriptions with essential job functions;

(C) interviewing systems; and

(D) reference checking and responding to reference checking.

(6) rules of conduct;

(7) hours and days of operation;

(8) employee benefits, including accrual of leave;

(9) employees' right to access their personnel files;

(10) written and oral employee orientation, initial training, and employee development;

(11) confidentiality requirements of employee records;

(12) employee evaluation;

(13) involuntary and voluntary termination;

(14) grievances; and

(15) non-discrimination in accordance with applicable civil rights laws and regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702320

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS**

### **1 TAC §§379.1201 - 379.1209**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.1201. *What facility codes must the special nonresidential project meet?*

§379.1202. *How must the special nonresidential project's facilities comply with the Americans with Disabilities Act (ADA)?*

§379.1203. *What are the additional facility requirements for the special nonresidential project providing direct services?*

§379.1204. *What kind of security system must the special nonresidential project's facilities have?*

§379.1205. *What security policies and procedures must the special nonresidential project have?*

§379.1206. *What are the safety policies and procedures that need to be developed if the special nonresidential project provides services to children?*

§379.1207. *What health and hygiene policies and procedures are required for the special nonresidential project?*

§379.1208. *What health and hygiene policies are required for the special nonresidential project providing services to children?*

§379.1209. *What are the regulations regarding smoking for the special nonresidential project?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702321

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §379.1201, §379.1202

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1201. Facility Requirements for the Special Nonresidential Project.

The contractor's facilities must:

- (1) have access to a private meeting area and includes adequate safe space for children;
- (2) a first-aid kit in each facility that is accessible to employees and volunteers;
- (3) clearly marked exits; and
- (4) basic furnishings that are clean and in good repair.

§379.1202. Security System Policies and Procedures.

(a) The contractor must have written policies and procedures to promote the safety and security of program participants, employees, and volunteers as appropriate for the project.

(b) If the special project provides direct services, the contractor must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, and agreements with local law enforcement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702322

Steve Aragón

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Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 6. PROGRAM ADMINISTRATION

### 1 TAC §§379.1301 - 379.1326

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1301. What services must the special nonresidential project provide to victims of family violence?*

*§379.1302. Can the special nonresidential project charge or solicit contributions or donations in return for the Texas Department of Human Services (DHS)-contracted services?*

*§379.1303. Who is eligible for services in the special nonresidential project?*

*§379.1304. Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?*

*§379.1305. What federal and state laws must the special nonresidential project follow when determining eligibility?*

*§379.1306. What criteria can the special nonresidential project use to determine eligibility for services?*

*§379.1307. Can the nonresidential special project ever deny services to an otherwise eligible individual?*

*§379.1308. Must the special nonresidential project provide access to services for people with limited English proficiency?*

*§379.1309. Is the nonresidential special project contractor subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?*

*§379.1310. What must the special nonresidential project include in its general confidentiality policy?*

*§379.1311. What information must the special nonresidential project provide to adult program participants regarding confidentiality?*

*§379.1312. Who needs to sign confidentiality agreements and where should the special nonresidential project keep these agreements?*

*§379.1313. What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the special nonresidential project?*

*§379.1314. What is required in the confidentiality training provided to employees, board members, interns, and direct service volunteers?*



§379.1315. *What can the special nonresidential project contractor who has attorneys or other licensed professionals providing Texas Department of Human Services (DHS)-funded services do to allow DHS to monitor their services?*

§379.1316. *What information should the special nonresidential project keep in program participant files?*

§379.1317. *What policies and procedures must the special nonresidential project have regarding entries in a program participant file?*

§379.1318. *Is the special nonresidential project required to give a program participant access to her or his files?*

§379.1319. *What must the special nonresidential project do if a program participant contests an entry in her or his file?*

§379.1320. *What controls must the special nonresidential project contractor maintain over program participant files?*

§379.1321. *When can the special nonresidential project release program participant information?*

§379.1322. *What must the special nonresidential project include in its written release of program participant information document?*

§379.1323. *What written procedures must the special nonresidential project have regarding court orders?*

§379.1324. *Must the special nonresidential project notify the victim of family violence when a court order affects the individual or the individual's records?*

§379.1325. *Must the special nonresidential project have written policies and procedures for the retention and destruction of documentation?*

§379.1326. *Must the special nonresidential project contractor provide project staff with telephone access?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702323

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.1301 - 379.1321

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

### §379.1301. *Required Services.*

At a minimum, the contractor must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51.

### §379.1302. *Charging for Services.*

The contractor cannot charge or solicit contributions or donations in return for Commission-contracted services.

### §379.1303. *Eligibility.*

Victims of family violence as defined in the Human Resources Code, Chapter 51, including adults subjected to sexual and/or emotional abuse by their batterers, are eligible for services of the contract.

### §379.1304. *Federal and State Laws Regarding Eligibility.*

When determining eligibility for services, the contractor must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112);
- (4) Americans with Disabilities Act of 1990 (Public Law 101-336);
- (5) Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107);
- (6) Commission regulations regarding civil rights; and
- (7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS.

### §379.1305. *Eligibility Criteria.*

The contractor must have written client eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services; and
- (3) gender and/or sexual orientation.

### §379.1306. *Denial of Services.*

The contractor can deny services to an otherwise eligible victim of family violence if it has written policies that outline specific reasons or behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of staff and program participants;
- (2) apply equally to all people; and
- (3) comply with the laws and regulations described in §379.1305 of this title (relating to Eligibility Criteria).

### §379.1307. *Access to Services for Victims of Family Violence with Limited English Proficiency.*

If the contractor provides direct services, the contractor must:

- (1) serve victims of family violence with limited English proficiency and take reasonable steps to assure meaningful access to the program; and
- (2) have written procedures for the access and delivery of services to people with limited English proficiency.

### §379.1308. *Nonresidential Services for a Family Violence Victim Who is Less than 18 Years Old.*

The contractor can provide services to a victim of family violence less than 18 years old if:

- (1) the minor victim is:
  - (A) accompanied by a parent or legal guardian;
  - (B) is legally emancipated; or

(C) is married or has been married; or

(2) the contractor:

(A) has parental or legal guardian consent to provide the minor with services; or

(B) complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.

§379.1309. Termination of Services.

(a) The contractor must have written policies that:

(1) outline the reasons and behaviors for which services can be terminated;

(2) address how current and former program participants can file grievances with the contractor;

(3) apply equally to all people; and

(4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Age Discrimination Act of 1975, and other applicable civil rights laws and regulations.

(b) When terminating services to program participants, the contractor must:

(1) provide written notice to the program participant of the termination;

(2) provide written notice of the right to file a grievance with the contractor and the explanation of the grievance procedure; and upon request of the program participant, provide contact information for the Commission's Family Violence Program for complaint purposes.

§379.1310. General Confidentiality Policy.

(a) The contractor must develop a written general confidentiality policy that:

(1) demonstrates that services will be delivered in a manner that ensures program participant confidentiality regarding records and information if the special project provides direct services; and

(2) includes a statement about the importance of confidentiality in maintaining the safety of:

(A) victims;

(B) victims' families;

(C) volunteers;

(D) employees; and

(E) others related to the program.

(b) The contractor must have all employees, volunteers, board members, student interns, and adult program participants who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the project. These agreements must be placed:

(1) in the personnel files of the employees;

(2) with the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, and program participants.

(c) The contractor must provide training to employees, board members, interns, and direct service volunteers on:

(1) confidentiality policies and procedures;

(2) why confidentiality is important for victims of family violence; and

(3) how information is recorded.

§379.1311. Confidentiality Information for Program Participants.

If direct services are provided to adult program participants, the contractor must provide these program participants with at least the following information regarding confidentiality in writing:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the organization has access to the program participants' records;

(4) the organization's policy and practices on confidentiality;

(5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) children;

(B) the elderly; and

(C) people with disabilities;

(6) the contractor's policy for responding to court orders and requests for information under the Public Information Act;

(7) the contractor's policy for release of information;

(8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a program participant terminates services.

§379.1312. Provision of Commission-funded Services by Attorneys or Other Licensed Professionals.

If attorneys and other licensed professionals prohibited by Texas law or regulations to release program participant records to the Commission are allowed to provide Commission-funded services, the contractor must submit an alternative method for verifying program participant services for the Commission's approval.

§379.1313. Information in Program Participant Files.

If the special project involves direct services, the contractor must limit the information kept in program participant files to information necessary for:

(1) statistical and funding purposes;

(2) establishing goals for intervention and advocacy;

(3) documenting the need for and delivery of services; and

(4) protecting the liability of the contractor and its employees, volunteers, and board members.

§379.1314. Policies and Procedures Regarding Entries in a Program Participant's File.

(a) If the contractor provides direct services, the contractor must have written policies and procedures regarding entries into a program participant file that ensure:

(1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a program participant file does not include the names of other program participants; and

(3) if the contractor provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

(b) The contractor must have written policies and procedures to ensure a special project program participant has access to review all information in her or his case file.

(c) If a program participant contests a case file entry in her or his file, the contractor must either:

(1) remove the entry from the file; or

(2) if the entry is not removed, note in the case file that the program participant believes the entry to be inaccurate.

§379.1315. Maintaining Control Over Program Participant Files.

The custodian of the records, designated by the executive director, is responsible for maintaining control over the records, including the court's access to the records. Program participant records must be kept secure and must not be removed from the contractor's premises without the written permission of the custodian of the records.

§379.1316. Release of Program Participant Information.

(a) The contractor may release information orally or in writing only if it first obtains a written release of information from the program participant.

(b) The release of information document must include the:

(1) name of no more than one person or organization to which the information is being released;

(2) specific information to be released;

(3) beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) date and the signatures of the program participant and the employee or volunteer; and

(5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

(c) The contractor, regardless of whether a written release of information from a program participant is obtained, must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) children;

(2) the elderly; and

(3) people with disabilities.

§379.1317. Court Orders.

Current or former employees, volunteers, board members, or student interns who receive a court order regarding any program records, program participants, special nonresidential project activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§379.1318. Procedures Regarding Court Orders.

The contractor must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order;

(2) on whom court orders may be served, such as the custodian of records;

(3) which attorney(s) should be contacted;

(4) who will discuss the subpoena with the program participant or other victim of family violence, and at what point; and

(5) the circumstances under which records might be released.

§379.1319. Notification of Court Orders.

The contractor must attempt whenever possible to notify the program participant, hotline caller, or other victim of family violence when a court order affects that individual or that individual's records.

§379.1320. Policies and Procedures for the Retention and Destruction of Documentation.

The contractor must develop written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to program participants including, but not limited to:

(1) case notes, case content, and case files;

(2) staff-to-staff communications; and

(3) documentation required by funders.

§379.1321. Telephone Access for Special Nonresidential Project Staff.

The contractor must provide telephone access for the special nonresidential project employees or volunteers during regular business hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702324

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 7. SERVICE DELIVERY

### 1 TAC §§379.1401 - 379.1410

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1401. What services must the special nonresidential project contractor provide?*

*§379.1402. Must the special nonresidential project contractor provide a crisis call hotline?*

*§379.1403. What crisis call hotline procedures must the special nonresidential project contractor have?*

§379.1404. *Can the special nonresidential project contractor use caller ID on the crisis call hotline?*

§379.1405. *Can the special nonresidential project contractor subcontract the answering of the crisis call hotline?*

§379.1406. *What information must the special nonresidential project contractor cover in the program participant's orientation?*

§379.1407. *Is the special nonresidential project allowed to incorporate religion into the intervention services?*

§379.1408. *Must the special nonresidential project contractor maintain a referral system?*

§379.1409. *What policies should the special nonresidential project contractor have regarding termination of program participant services?*

§379.1410. *What information about termination of services must the special nonresidential project contractor provide program participants?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702325

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.1401 - 379.1408

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

### §379.1401. Special Nonresidential Project Services.

The contractor must provide:

(1) at least one specialized family violence service, which can be either:

(A) community education relating to family violence;

or

(B) direct delivery of services for adult victims of family violence or their children;

(2) at a minimum, the following services to victims of family violence:

(A) safety planning;

(B) appropriate family violence information regarding hotlines;

(C) information about the victim's legal rights and options, and referral to legal resources; and

(D) information about the dynamics of family violence;

(3) information about and referral to existing community resources;

(4) understanding and support of victims;

(5) if providing direct services, advocacy, including:

(A) explaining the program participant's rights;

(B) assisting the program participant make choices about those rights; and

(C) assisting the program participant access the services to which she or he is entitled.

### §379.1402. Data Collection.

(a) The contractor will regularly report complete and accurate data through the data collection system approved by the Commission, using service definitions in the Special Nonresidential Project Provider Manual. Data submission is due by the deadline specified in the contract. The Commission reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that the contractor may not be able to provide services due to a natural disaster or fire, the affected contractor will consult with the Commission regarding whether exceptions to data reporting deadlines and data collection service definition should be made.

### §379.1403. Crisis Call Hotline.

The contractor does not have to provide a crisis call hotline, but if the contractor does provide a hotline and it is funded by the Commission, the contractor must:

(1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;

(2) accept collect calls and anonymous incoming calls;

(3) list the hotline number in all telephone books within the contractor's service area and on the contractor's website, if applicable;

(4) provide a minimum of two hotline telephone lines;

(5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;

(6) provide Caller ID blocks on the contractor's numbers for outgoing calls to clients and other victims of family violence, which may only be unblocked with permission from the client or victim of family violence;

(7) ensure the screening process complies with all state and federal law if the hotline is used to screen for eligibility for services;

(8) keep all hotline calls and any related documentation confidential;

(9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;

(10) ensure the contractor is able to provide meaningful access to people with limited English proficiency, and;

(11) if the contractor uses Caller ID or any other technology that establishes a record of calls on the hotline:

(A) ensure there will not be a breach of confidentiality to third parties; and

(B) limit access to the records generated by these devices.

§379.1404. Subcontracting the Crisis Call Hotline.

If the contractor subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Commission and must have a written policy that addresses how the contractor meets the Commission's training requirements for all direct service staff and will ensure immediate access to the contractor's services.

§379.1405. Program Participant's Orientation.

If the contractor provides direct services, the contractor must ensure orientation is provided orally and in writing, is documented and includes, but is not limited to:

- (1) explanation of services available;
- (2) termination policy;
- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; and
- (8) waivers of liability.

§379.1406. Religion and Intervention Services.

If the contractor provides direct intervention family violence services, it must not use state funds for inherently religious activities, must not promote any one religion, and must not require program participants to participate in religious groups or to use religious materials.

§379.1407. Safety Policies and Procedures if Providing Services to Children.

(a) The contractor must develop and endorse written nonviolent disciplinary policies and procedures for program participants and for employees and volunteers who provide services to children.

(b) The project must have written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children if employees or volunteers take children on outings.

§379.1408. Texas Department of Family and Protective Services' (DFPS) Child Care Licensing Regulations.

If the contractor is subject to DFPS child care licensing regulations, the contractor must have written policies and procedures to ensure compliance with those rules and regulations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702326

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## SUBCHAPTER D. NONRESIDENTIAL CENTERS

The Texas Health and Human Services Commission (HHSC) proposes the repeal and replacement of Subchapter D, Non-residential Centers. Specifically, HHSC proposes the repeal of Division 1, Board of Directors, §§379.1501 - 379.1510 and new §§379.1501 - 379.1504; the repeal of Division 2, Contract Standards, §§379.1601 - 379.1622 and new §§379.1601 - 379.1606; the repeal of Division 3, Fiscal Management, §§379.1701 - 379.1716 and new §§379.1701 and §379.1702; the repeal of Division 4, Personnel, §§379.1801 - 379.1818 and new §§379.1801-379.1806; the repeal of Division 5, Facility, Safety, and Health Requirements, §§379.1901 - 379.1909 and new §§379.1901 - 379.1903; the repeal of Division 6, Program Administration, §§379.2001 - 379.2037 and new §§379.2001 - 379.2033; the repeal of Division 7, Service Delivery, §§379.2101 - 379.2121 and new §§379.2101 - 379.2113. This subchapter defines contracting, fiscal, personnel, facility, board, service delivery, and program administration rules specific to programs who provide nonresidential services to victims of family violence. Most rule changes include minor revisions to language. Some rules that have moved to contract are being deleted.

These rules are proposed to clarify issues related to contracting, fiscal, personnel, facility, board, service delivery, and program administration that are not specified in contract. This makes the requirements more accessible to interested parties. HHSC/FVP anticipates public comment from programs and advocates. No budget implications are anticipated.

### Background and Justification

HHSC has the responsibility of administering the Family Violence Program. HHSC has taken the initiative to reformat the Family Violence Program rules. As part of that initiative, HHSC has also updated and clarified the rules as necessary. HHSC has determined that these changes require the repeal of Subchapter D, Nonresidential Centers. HHSC has incorporated most of the language of current Subchapter D into new Subchapter D.

In addition to these technical changes, HHSC has added clarifying language throughout the subchapter. Stakeholder input has been obtained from Commission-funded programs and from the Texas Council on Family Violence (TCFV), the state coalition on domestic violence.

### Section-by-Section Summary

Most of the requirements in the current rules have been incorporated in the Family Violence Nonresidential Center contract ("Contract"), and the remaining rules have been renumbered. In addition, HHSC has made minor clarifications throughout Subchapter D.

The requirements of two of the current rules, §379.706 and §379.726 have been incorporated into §379.2010 and §379.2101 under Program Administration.

### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, during the period the proposed rules are in effect, there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no anticipated effect on small businesses or micro businesses to comply with

the rules, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

#### Public Benefit

Laurie Shannon, Manager for the Family Violence Program, has determined that, for each year the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing these rules, will be a consistent, reliable, and cost-effective mode of service delivery to victims (and their children) of family violence.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposed amendments to the rules may be submitted to Dr. Sujata Desai, Program and Policy Specialist in Family Services, Texas Health and Human Services Commission, P.O. Box 12668, Mail Code 2010, Austin, Texas 78711-2668, by fax to (512) 206-4556, or by E-mail to [sujata.desai@hhsc.state.tx.us](mailto:sujata.desai@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## DIVISION 1. BOARD OF DIRECTORS

### 1 TAC §§379.1501 - 379.1510

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Human Resources Code, Chapter 51 and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed repeals.

§379.1501. *What is the stewardship function of the nonresidential center's board of directors?*

§379.1502. *What are the responsibilities of the nonresidential center's board of directors?*

§379.1503. *What documents must the nonresidential center's board of directors maintain?*

§379.1504. *What must the nonresidential center's bylaws contain?*

§379.1505. *What must the nonresidential center board include in its recruitment procedures?*

§379.1506. *What information does the nonresidential center need to provide to new board members?*

§379.1507. *What must the nonresidential center include in its board handbook?*

§379.1508. *How often should the nonresidential center board of directors receive training?*

§379.1509. *What training must the nonresidential center's board of directors receive?*

§379.1510. *What responsibilities do board members have regarding confidentiality?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702327

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



### 1 TAC §§379.1501 - 379.1504

#### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1501. *Fiscal Oversight and Accountability.*

The board must:

(1) ensure that the center is operating in a manner that keeps the organization's mission and purpose focused, without becoming involved in day-to-day operations;

(2) hire the executive director;

(3) as a whole, or the center's finance committee, regularly review actual revenue and expenditures and compare them to budgeted revenue and estimated costs;

(4) review and approve programs and budgets; and

(5) review and approve board policies for the organization's operation.

§379.1502. *Nonresidential Center's Board Handbook.*

The members must be given a handbook that contains, at a minimum, the following:

(1) board member job description;

(2) current list of board members with mailing addresses and telephone numbers;

(3) organization's mission statement;

(4) organization's bylaws and a copy of the letter granting 501(c)(3) status;

(5) list of all committees, including appointed board members and assigned staff;

(6) committee descriptions;

(7) policies of the organization;

(8) organizational chart;

(9) history of the organization;

(10) list of program services and a brief description of each program;

(11) current budget, including funding sources and subcontractors;

(12) brief description of contract provisions with attorneys, auditors, or other professionals;

(13) basic information about family violence; and

(14) brief history of the Texas Battered Women's Movement.

§379.1503. Board of Director's Training.

At least once during their term of service, each board member must receive training on the following:

(1) an explanation of the center's mission, philosophy, and a brief history;

(2) an explanation of the dynamics of family violence that includes its causes and effects;

(3) a description of the organization's current programs, provided by program staff;

(4) a review of the organization's policies and clarification of any changes made during the year;

(5) an explanation of how the center is funded and future funding projections;

(6) a discussion, presented by the board chair or a member of the executive committee, of the following:

(A) the board's role and responsibilities related to legal and fiscal accountability;

(B) meetings and attendance requirements;

(C) committee duties, structure, and assignments; and

(D) fundraising and public relations responsibilities.

(7) an explanation of the organization's insurance coverage, including director's and officers' liability insurance or notification of inability to obtain insurance;

(8) an explanation of the working relationship between the board and staff, including but not limited to which staff member is contacted regarding questions or requests and which staff members contact board members routinely; and

(9) an update on any changes made in the Texas Non-Profit Corporation Act.

§379.1504. Confidentiality.

Each board member must:

(1) be familiar with the Commission's rules and the center's policies related to confidentiality; and

(2) provide written assurance to the center that she or he will not use the position to obtain or access confidential program participant information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702328

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **DIVISION 2. CONTRACT STANDARDS**

### **1 TAC §§379.1601 - 379.1622**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### **Statutory Authority**

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1601. Who is eligible to apply for a nonresidential center contract?*

*§379.1602. How does an organization apply for funding as a Texas Department of Human Services (DHS)-contracted nonresidential center?*

*§379.1603. Can an organization reapply for funding if the nonresidential center contract has been terminated for failure to perform the obligations?*

*§379.1604. Can the nonresidential center target services to a particular unserved or underserved population?*

*§379.1605. Can the nonresidential center apply for a special project contract?*

*§379.1606. What is the process to renew the nonresidential center contract?*

*§379.1607. What types of documentation must the nonresidential center maintain?*

*§379.1608. How long must the nonresidential center keep the documents?*

*§379.1609. Who may inspect, monitor, or evaluate the nonresidential center client records, financial books, and supporting documents that pertain to services provided?*

*§379.1610. What documents should the nonresidential center have available for a monitoring visit?*

§379.1611. *What should the nonresidential center do after it receives a Texas Department of Human Services (DHS) monitoring report?*

§379.1612. *Does the nonresidential center need to have an internal monitoring system?*

§379.1613. *Does the nonresidential center have to maintain a copy of the Texas Department of Human Services Family Violence Program Nonresidential Center Provider Manual?*

§379.1614. *How much of the nonresidential center's funding can the Texas Department of Human Services (DHS) provide?*

§379.1615. *Is it possible to obtain a waiver to the prescribed percentage of the nonresidential center's operating budget?*

§379.1616. *How can the nonresidential center request a variance or waiver?*

§379.1617. *Can the nonresidential center receive a funding percentage waiver more than once?*

§379.1618. *What is the process to amend the nonresidential center contract?*

§379.1619. *What is the process to revise the nonresidential center budget?*

§379.1620. *What is the responsibility of the nonresidential center with regard to subcontracts?*

§379.1621. *What must a nonresidential center do if there is a change in corporate control?*

§379.1622. *What can happen if the nonresidential center does not comply with the rules?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702329

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.1601 - 379.1606

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1601. Primary Services to an Unserved or Underserved Population.

If the center's purpose is to provide services to a particular population, it must have a plan for providing services to otherwise eligible victims who are not members of the targeted population. This plan may include referrals; however, if an appropriate referral cannot be made, the center must provide the requested services.

§379.1602. Special Project Contract.

The center may apply for a special project contract; however, the proposed services cannot be the same as those for the nonresidential center contract.

§379.1603. Internal Monitoring System.

The center must have a written internal monitoring system to evaluate:

(1) quality of the center's required program participant services;

(2) accuracy of the fiscal and programmatic documentation.

§379.1604. Funding Waivers.

The Commission may waive the applicable percentage when all of the following conditions are met:

(1) the center's anticipated income for the contract year is expected to increase or decrease by more than 10% relative to the actual income received during the previous contract year;

(2) the change in the center's budget has resulted from:

(A) an increase in the state appropriation for center services; or

(B) a decrease in funding from other sources that cannot be attributed to a failure or deficiency on the center's part.

§379.1605. Requesting a Variance or Waiver.

(a) To request a waiver from the maximum prescribed funding percentage, the center must:

(1) submit a written request and appropriate documentation to the Commission demonstrating the center's efforts to raise funds compared to its budget; and

(2) agree in writing to receive technical assistance as designated by the Commission.

(b) To request a variance to or waiver from any other requirement in this subchapter, the board must submit a written request to the Commission on forms prescribed by and must document compelling reasons the requirement cannot be met.

§379.1606. More than one Funding Percentage Waiver.

A center may not receive more than two funding waivers in consecutive contract terms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702330

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 3. FISCAL MANAGEMENT

### 1 TAC §§379.1701 - 379.1716

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

Statutory Authority



The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.1701. *What are the accounting system requirements for the non-residential center?*

§379.1702. *Is the nonresidential center required to have a fidelity bond?*

§379.1703. *What must be included in the Texas Department of Human Services (DHS) purchase of services contract budget?*

§379.1704. *How should the nonresidential center handle in-kind contributions?*

§379.1705. *How should the nonresidential center handle cash contributions?*

§379.1706. *How should the nonresidential center document required cash/in-kind match?*

§379.1707. *How does the nonresidential center allocate overhead costs to its Texas Department of Human Services contract?*

§379.1708. *What must the nonresidential center do in order to receive payment from the Texas Department of Human Services (DHS)?*

§379.1709. *What costs are eligible for reimbursement under the non-residential center contract?*

§379.1710. *Can the nonresidential center's funds and expenses be combined with the contractor's other Texas Department of Human Services (DHS) contract(s)?*

§379.1711. *What is the quarterly report?*

§379.1712. *When is the quarterly report due?*

§379.1713. *What is the annual report?*

§379.1714. *When is the annual report due?*

§379.1715. *What are the nonresidential center's audit requirements?*

§379.1716. *When is the nonresidential center audit due?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702331

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



# **1 TAC §379.1701, §379.1702**

Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

§379.1701. Accounting System Requirements.

The center must maintain an accounting system and records that:

(1) records revenue and expenditures using generally accepted accounting principles;

(2) includes a chart of accounts that lists all accounts by an assigned number;

(3) contains a general ledger and subsidiary ledgers;

(4) maintains supporting documentation for all revenue and expenditures, including, but not limited to:

(A) receipts or vouchers for revenue;

(B) bank statements;

(C) canceled checks;

(D) deposit slips;

(E) approved invoices;

(F) receipts;

(G) leases;

(H) contracts;

(I) time sheets;

(J) inventory; and

(K) cost allocation worksheets.

(5) identifies all funding sources and expenditures by separate fund type; and

(6) uses a double-entry accounting system, either cash, accrual, or modified accrual.

§379.1702. Cash/In-Kind Match.

The center must develop written internal policies and procedures to accurately document the cash/in-kind match received as required by funding sources.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702332

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

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## DIVISION 4. PERSONNEL

### 1 TAC §§379.1801 - 379.1818

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.1801. *Must the nonresidential center comply with federal personnel laws?*

§379.1802. *What additional personnel policies and procedures must the nonresidential center have?*

§379.1803. *Who needs a copy of the nonresidential center's personnel handbook?*

§379.1804. *Are there any requirements for the nonresidential center employees' personnel files?*

§379.1805. *Where should the nonresidential center keep its employee payroll information?*

§379.1806. *What must the nonresidential center do to ensure confidentiality of specific employee information?*

§379.1807. *What should the nonresidential center address in its policy regarding confidentiality of employee records?*

§379.1808. *What should the nonresidential center address in its drug-free workplace policies?*

§379.1809. *What should the nonresidential center address in its recruitment policies?*

§379.1810. *What should the nonresidential center address in its interviewing and hiring policies?*

§379.1811. *Does the nonresidential center need written job descriptions for its employee positions?*

§379.1812. *Should the nonresidential center identify its employee positions as exempt or non-exempt?*

§379.1813. *What are the nonresidential center requirements for new employee orientation?*

§379.1814. *Does the nonresidential center need to provide specific job training?*

§379.1815. *Are there any requirements for specific program training for nonresidential center employees?*

§379.1816. *What access should the nonresidential center provide to the Texas Department of Human Services (DHS) Family Violence Program Provider Manual?*

§379.1817. *Should the nonresidential center evaluate employee performance?*

§379.1818. *Can the nonresidential center use probationary periods for its employees?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702333

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900

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### 1 TAC §§379.1801 - 379.1806

#### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.1801. Personnel Policies.

The center must have written personnel policies, approved by the Board of Directors, and procedures for its personnel handbook that standardize the everyday actions and conduct of all employees. All employees must have ongoing access to the personnel handbook and must be notified of new or changed personnel policies. The handbook must address at a minimum the following:

- (1) contract labor;
- (2) conflict of interest;
- (3) domestic violence in the workplace;
- (4) nepotism;
- (5) hiring process that is uniform for all candidates for a particular position and includes, but is not limited to:
  - (A) job posting;
  - (B) job descriptions with essential job functions;
  - (C) interviewing systems; and
  - (D) reference checking and responding to reference checking.
- (6) rules of conduct;
- (7) hours and days of operation;
- (8) employee benefits, including accrual of leave;
- (9) employees' right to access their personnel files;
- (10) written and oral employee orientation, initial training, and employee development;
- (11) confidentiality requirements of employee records;
- (12) employee evaluation;

- (13) involuntary and voluntary termination; and
- (14) grievances.

§379.1802. Personnel Files.

The center must maintain a personnel file for each employee. Each file must include at least the following information:

- (1) employment application or resume;
- (2) job descriptions;
- (3) signed acknowledgment of confidentiality agreement;
- (4) signed acknowledgment of receipt of personnel policies and procedures handbook;
- (5) all performance evaluations;
- (6) documentation of orientation, initial training, and employee development;
- (7) any status or classification change;
- (8) all disciplinary actions if any; and
- (9) letters of praise or criticism if any.

§379.1803. Drug and Alcohol Policy.

If under the jurisdiction of the Drug-Free Workplace Act, the center must develop a written drug and alcohol policy that states at least the following:

- (1) illegal use or illegal possession of alcohol or drugs is prohibited while on duty;
- (2) a belief in a treatment and recovery approach;
- (3) a stated concern for employees;
- (4) programs and systems for assistance; and
- (5) a statement of confidentiality.

§379.1804. New Employee Orientation and Training.

(a) The center must provide an oral orientation for all new employees within the first two days of employment.

(b) Within two weeks of the day of employment, all new employees must receive basic oral or written information regarding:

- (1) dynamics of family violence;
- (2) a brief history of the Texas Battered Women's Movement; and
- (3) a brief summary of current Texas laws that address family violence issues.

(c) Direct service employees and their supervisors must also receive training on the following:

- (1) crisis intervention;
- (2) hotline skills, if applicable;
- (3) peer counseling techniques;
- (4) risk assessment, safety planning, and legal options for victims of family violence;
- (5) the center policies and procedures;
- (6) applicable civil rights laws and regulations;
- (7) all required documentation and procedures as related to program participant issues; and
- (8) confidentiality.

§379.1805. Legal Advocate.

The center must:

(1) designate at least one staff person, either paid or volunteer, to act as a legal advocate; and

(2) provide access to relevant trainings to assure that appropriate employees, volunteers, and interns have a working knowledge of current Texas laws pertaining to family violence, as well as the local justice system's response to family violence in each county where services are provided.

§379.1806. Volunteer Coordinator.

The center must designate an employee or volunteer to act as the volunteer coordinator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702334

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 5. FACILITY, SAFETY, AND HEALTH REQUIREMENTS

### 1 TAC §§379.1901 - 379.1909

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

*§379.1901. What facility codes must the nonresidential center meet?*

*§379.1902. Must the nonresidential center's facilities comply with the Americans with Disabilities Act (ADA)?*

*§379.1903. What are the additional facility requirements for the non-residential center?*

*§379.1904. What kind of security system must the nonresidential center have?*

*§379.1905. What security policies and procedures must the nonresidential center have?*

*§379.1906. What are the safety policies and procedures that the non-residential center needs to develop for providing services to children?*

*§379.1907. What health and hygiene policies and procedures must the nonresidential center follow?*

§379.1908. *What health and hygiene policies are required for the nonresidential center providing services to children?*

§379.1909. *What are the regulations regarding smoking in the non-residential center?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702335

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.1901 - 379.1903

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.1901. Facility Requirements for the Nonresidential Center.

The center's facility must have:

- (1) a private meeting area for individual or group services;
- (2) access to bathroom facilities, including toilets and lavatories;
- (3) adequate safe space for children;
- (4) basic furnishings that are clean and in good repair;
- (5) clearly marked exits; and
- (6) a first-aid kit in all center facilities, accessible to employees and volunteers.

#### §379.1902. Security System.

The center must have a security system that is operational 24 hours a day. The security system may include, but is not limited to an alarm system, special lighting, dead bolts, and agreements with local law enforcement.

#### §379.1903. Security Policies and Procedures.

The center must have written policies and procedures to promote the safety and security of program participants, employees, and volunteers. These policies and procedures must address:

- (1) an intruder on the property, such as a batterer;
- (2) assaults;
- (3) bomb threats;
- (4) threatening telephone calls;
- (5) natural disasters (e.g., hurricanes, tornadoes, floods, fires);

(6) evacuations; and

(7) power outages.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702336

Steve Aragón

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Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 6. PROGRAM ADMINISTRATION

### 1 TAC §§379.2001 - 379.2037

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

§379.2001. *What services must the nonresidential center provide to victims of family violence?*

§379.2002. *Can the nonresidential center charge or solicit contributions or donations in return for Texas Department of Human Services (DHS)-contracted services?*

§379.2003. *Who is eligible for services in the nonresidential center?*

§379.2004. *Can a minor receive Texas Department of Human Services (DHS)-contracted services if the parent is not receiving services?*

§379.2005. *What federal and state laws must the nonresidential center follow when determining eligibility?*

§379.2006. *What criteria can the nonresidential center use to determine eligibility for services?*

§379.2007. *Can the nonresidential center ever deny services to an otherwise eligible individual?*

§379.2008. *Must the nonresidential center provide access to services for people with limited English proficiency?*

§379.2009. *Is the nonresidential center subject to Texas Department of Protective and Regulatory Services' (PRS's) child care licensing regulations?*

§379.2010. *What must the nonresidential center include in its general confidentiality policy?*

§379.2011. *What information must the nonresidential center provide adult program participants regarding confidentiality?*

§379.2012. *Who needs to sign confidentiality agreements and where should the nonresidential center keep these agreements?*

§379.2013. *What must a current or former employee, volunteer, board member, or student intern do if she or he receives a court order regarding the nonresidential center?*

§379.2014. *What is required in confidentiality training provided to employees, board members, interns, and direct service volunteers?*

§379.2015. *What information should the nonresidential center keep in program participant files?*

§379.2016. *What policies and procedures must the nonresidential center have regarding entries in a program participant file?*

§379.2017. *Is the nonresidential center required to give a program participant access to her or his file?*

§379.2018. *What must the nonresidential center do if a program participant contests an entry in her or his file?*

§379.2019. *What controls must the nonresidential center maintain over program participant files?*

§379.2020. *When can the nonresidential center release program participant information?*

§379.2021. *What must the nonresidential center include in its written release of program participant information document?*

§379.2022. *What written procedures must the nonresidential center have regarding court orders?*

§379.2023. *Must the nonresidential center notify a victim of family violence when a court order affects the individual or the individual's records?*

§379.2024. *Must the nonresidential center have written policies and procedures for the retention and destruction of documentation?*

§379.2025. *Is there a minimum number of hours a nonresidential center must be open each week?*

§379.2026. *What are the requirements for the nonresidential center if a victim of family violence needs shelter services?*

§379.2027. *What must the nonresidential center do if it has any disruption in its ability to provide services?*

§379.2028. *What responsibility does the nonresidential center have to inform all program participants about their rights?*

§379.2029. *Must the nonresidential center develop a plan regarding cooperation with criminal justice officials?*

§379.2030. *What responsibility does the nonresidential center have to provide community education?*

§379.2031. *What methods must the nonresidential center use when providing community education?*

§379.2032. *What is required for the nonresidential center's volunteer program?*

§379.2033. *How much recruitment must the nonresidential center do for volunteers?*

§379.2034. *When recruiting volunteers, what laws or codes must the nonresidential center follow?*

§379.2035. *How often must the nonresidential center offer training for volunteers?*

§379.2036. *What training must the nonresidential center provide to direct service volunteers?*

§379.2037. *What training must the nonresidential center provide to non-direct service volunteers?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702337

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Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## 1 TAC §§379.2001 - 379.2033

### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.2001. Required Services.

At a minimum, the center must provide access to the services for victims of family violence that are outlined in the Human Resources Code, Chapter 51.

#### §379.2002. Charging for Services.

The center cannot charge or solicit contributions or donations in return for Commission-contracted services.

#### §379.2003. Eligibility.

Victims of family violence as defined in the Human Resource Code, Chapter 51, and adults subjected to sexual and/or emotional abuse by their batterers are eligible for services at the center.

#### §379.2004. Federal and State Laws Regarding Eligibility.

When determining eligibility for services, the center must comply with the following applicable state and federal laws and any amendments made to each of these laws. Policies and procedures must be written to ensure compliance with:

- (1) Human Resources Code, Chapter 51;
- (2) Title VI of the Civil Rights Act of 1964 (Public Law 88-352);
- (3) Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112);
- (4) Americans with Disabilities Act of 1990 (Public Law 101-336);
- (5) Age Discrimination Act of 1975 (42 U.S.C. 6101-6107);
- (6) Commission regulations regarding civil rights; and
- (7) Texas Health and Safety Code, §85.113, relating to HIV/AIDS.

#### §379.2005. Eligibility Criteria.

The center must have written program participant eligibility and screening procedures that are based solely on the individual's status as a victim of family violence, without regard to:

- (1) income;
- (2) whether the individual contributes, donates, or pays for these services; and
- (3) gender and/or sexual orientation.

§379.2006. Denial of Services.

The center can deny services to an otherwise eligible victim of family violence only if it has written policies that outline specific behaviors that would make a victim ineligible. These policies must:

- (1) address only behaviors that threaten the safety and security of shelter staff and residents;
- (2) apply equally to all people; and
- (3) comply with the laws and regulations described in §379.2005.

§379.2007. Eligibility of Previously Involuntarily Terminated Program Participants.

The center must have written policies and procedures for taking into consideration the safety of a victim for whom services were previously involuntarily terminated and who is currently requesting services.

§379.2008. Access to Services for People with Limited English Proficiency.

The center must:

- (1) serve victims of family violence with limited English proficiency and take reasonable steps to assure meaningful access to the program; and
- (2) have written procedures for the access and delivery of services to people with limited English proficiency.

§379.2009. Services for a Family Violence Victim Who is Less than 18 Years Old.

The center can provide services to a victim of family violence less than 18 years old if:

- (1) the minor victim is:
  - (A) accompanied by a parent or a legal guardian;
  - (B) legally emancipated; or
  - (C) married or has been married; or
- (2) the center:
  - (A) has parental or legal guardian consent to provide the minor victim with services; or
  - (B) complies with the Texas Family Code, §32.004, if parental or legal guardian consent is not obtained.

§379.2010. Termination of Services.

(a) The center must have written policies that:

- (1) outline the reasons and behaviors for which services can be terminated;
- (2) address how current and former program participants can appeal terminations and file grievances with the center;
- (3) apply equally to all people; and
- (4) comply with the Americans with Disabilities Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Age Discrimination Act of 1975, and other applicable laws and regulations.

(b) When terminating services to program participants, the center must:

- (1) provide written notice to the program participant of the termination;
- (2) provide written notice of the right to file a grievance with the center and the explanation of the grievance procedure; and

(3) upon request of the program participant, provide contact information to the program participant for the Commission Family Violence Program for complaint purposes.

§379.2011. General Confidentiality Policy.

The center must develop a written general confidentiality policy that provides:

(1) that all information will be kept confidential, including all personal information and all communications, observations, and information made by and between or about adult and child program participants, employees, volunteers, student interns, and board members;

(2) a statement about the importance of confidentiality in maintaining the safety of:

- (A) victims;
- (B) victims' families;
- (C) volunteers;
- (D) employees; and
- (E) others related to the program;

(3) the parameters of what must be held confidential and by whom;

- (4) the limits of confidentiality under the law;
- (5) a designation of custodian of the records;
- (6) procedures for:

- (A) retention and destruction of records;
- (B) responses to court orders;
- (C) release of information;
- (D) reports of abuse or suspected abuse of:
  - (i) children;
  - (ii) the elderly; and
  - (iii) people with disabilities.

(7) requests of information under the Public Information Act;

- (8) maintenance of records; and
- (9) access to records that comply with confidentiality provisions in state and federal law.

§379.2012. Confidentiality Information for Adult Program Participants.

The center must provide to adult program participants, in writing, at least the following:

- (1) the right to see their records;
- (2) the kind of information recorded, why, and the methods of collection;
- (3) who within the center has access to the program participants' records;
- (4) the center's policy and practices on confidentiality;
- (5) current confidentiality laws in Texas and the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

- (A) children;
- (B) the elderly; and

(C) people with disabilities;

(6) the center's policy for responding to court orders and requests for information under the Public Information Act;

(7) the center's policy for release of information;

(8) when the records will be decoded or destroyed; and

(9) what kind of information will remain in the file once a program participant terminates services.

§379.2013. Confidentiality Agreements.

The center must have all employees, volunteers, board members, student interns, and adult program participants who participate in group intervention services sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or program participant leaves the center. These agreements must be placed:

(1) in the personnel files of the employees;

(2) with the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, and program participants.

§379.2014. Confidentiality Training.

The center must provide training to employees, board members, interns, and direct service volunteers on:

(1) confidentiality policies and procedures;

(2) why confidentiality is important for victims of family violence; and

(3) how information is recorded.

§379.2015. Information in Program Participant Files.

The center must limit the information kept in files to information necessary for:

(1) statistical and funding purposes;

(2) establishing goals for intervention and advocacy;

(3) documenting the need for and delivery of services; and

(4) protecting the liability of the center and its employees, volunteers, and board members.

§379.2016. Policies and Procedures Regarding Entries in Program Participant's Files.

(a) The center must have written policies and procedures regarding entries into a program participant file that ensure:

(1) each entry is signed and dated by the employee or volunteer entering the information;

(2) a program participant file does not include the names of other program participants; and

(3) if the center provides direct services for both the victim and the violent family member, at a minimum, separate case records are maintained to promote victim safety and confidentiality.

(b) The center must have written policies and procedures to ensure a program participant has access to review all information in her or his case file.

(c) If a program participant contests a case file entry in her or his file, the center must either:

(1) remove the entry from the file; or

(2) note in the case file, if the entry is not removed, that the program participant believes the entry to be inaccurate.

§379.2017. Maintaining Control Over Program Participant Files.

The custodian of the records, designated by the executive director, is responsible for maintaining control over the program participant records, including the court's access to the records. Program participant records must be kept secure and must not be removed from the center's premises without the written permission of the custodian of the records.

§379.2018. Release of Program Participant Information.

(a) The center may release information orally or in writing, only if it first obtains a written release of information from the program participant.

(b) Regardless of whether a written release of information from a program participant is obtained, the center must release information in order to comply with the applicable state laws to report abuse or suspected abuse of:

(1) children;

(2) the elderly; and

(3) people with disabilities.

§379.2019. Release of Program Participant Information Document.

The release of information document must include the:

(1) name of no more than one person or organization to which the information is being released;

(2) specific information to be released;

(3) beginning and ending dates the release is effective, not to exceed the program participant's active length of services;

(4) date and the signatures of the program participant and the employee or volunteer; and

(5) right to revoke a release of information at any time. This revocation request must be submitted in writing.

§379.2020. Court Orders.

Individuals (current or former employees, volunteers, board members, or student interns) who receive a court order regarding any program records, program participants, center activities, or personnel issues must immediately notify the executive director or, in the executive director's absence, the designated staff.

§379.2021. Procedures Regarding Court Orders.

The center must have written procedures for responding to court orders, such as subpoenas, search warrants, or writs of attachment. The written procedures must include:

(1) what to do when a process server arrives with a court order;

(2) on whom court orders may be served, such as the custodian of records;

(3) which attorney(s) should be contacted;

(4) who will discuss the subpoena with the program participant or other victim of family violence, and at what point; and

(5) the circumstances under which records may be released.

§379.2022. Notification of Court Orders.

The center must attempt, whenever possible, to notify a program participant, hotline caller, or other victim of family violence when a court order affects the program participant or the program participant's records.

§379.2023. Policies and Procedures for the Retention and Destruction of Documentation.

The center must have written policies and procedures for the retention and destruction of all written, electronic, and digital documentation that pertains to program participants, including, but not limited to:

- (1) case notes, case content, and case files;
- (2) staff-to-staff communications; and
- (3) documentation required by other funders.

§379.2024. Minimum Hours for a Nonresidential Center.

The center must provide services to victims of family violence a minimum of 40 hours per week with a consistent schedule of service hours that may be regular business hours or other hours as approved by the Commission.

§379.2025. Requirements if a Victim of Family Violence Needs Shelter Services.

The center must have written referral procedures for helping victims of family violence obtain temporary shelter.

§379.2026. Disruption in Providing Services.

(a) The center must have written policies and procedures for disruption in services.

(b) Any disruption in the ability to provide services must be reported immediately to the Commission.

(c) After the initial oral notification, the center must submit to the Commission a written description of the disruption and how services will be or were maintained.

§379.2027. Program Participant Rights.

The center must:

- (1) provide written rights to all program participants; and
- (2) post program participant rights in a visible area within all center facilities.

§379.2028. Cooperation With Criminal Justice Officials.

The center must develop a written plan that outlines efforts to cooperate with criminal justice officials in each county where services are provided, including:

- (1) establishing an ongoing working relationship with local criminal justice officials;
- (2) encouraging the justice system to develop policies and procedures that are responsive to the needs of victims of family violence and enhance collaboration among justice system agencies and service providers;
- (3) pursuing opportunities to participate in the training of law enforcement officers and other criminal justice officials;
- (4) providing information and education to law enforcement and criminal justice officials about the dynamics of family violence, services available, and support needed from the criminal justice system; and
- (5) encouraging local criminal justice professionals to post signs and leave brochures in their offices about family violence and the availability of services.

§379.2029. Community Education.

(a) The center must have a written policy about community education that:

(1) ensures community education is provided to as many diverse groups as possible in each county where services are provided;

(2) focuses part of the community education on informing victims of family violence of existing family violence services; and

(3) complies with §379.2008 of this title (relating to Access to Services for People With Limited English Proficiency).

(b) The center must:

- (1) use presentations;
- (2) distribute written materials; and
- (3) establish and use media contacts.

§379.2030. Volunteer Program.

The center must have and follow written policies and procedures regarding:

(1) recruitment methods that reach diverse groups of people from the communities of each county where services are provided;

(2) screening, training, supervising, evaluating, and terminating volunteers; and

(3) offering training for volunteers at least twice a year.

§379.2031. Volunteer Recruitment.

The center must have an ongoing recruitment program for volunteers to help with the center's programs that complies with:

(1) civil rights laws that allow qualified people an opportunity to volunteer; and

(2) the Human Resources Code, Chapter 51, which states that the center must find support for the center through volunteer work, especially volunteer work by people who have been victims of family violence.

§379.2032. Content of Training for Direct Service Volunteers.

The center must develop training for direct service volunteers that includes, but is not limited to:

- (1) a brief history of the Battered Women's Movement;
- (2) the need for and benefit of shelter services;
- (3) the dynamics of family violence;
- (4) a brief summary of current Texas laws that address family violence issues;
- (5) crisis intervention;
- (6) hotline skills, if applicable;
- (7) peer counseling techniques;
- (8) risk assessment and safety planning;
- (9) center policies and procedures;
- (10) the organization's mission and philosophy;
- (11) confidentiality;
- (12) legal options for victims of family violence;
- (13) community resources;
- (14) sensitivity to cultural diversity; and
- (15) the need for community systems to be responsive to the needs of victims of family violence.

§379.2033. Content of Training for Non-Direct Service Volunteers.



The center must provide non-direct service volunteers with:

- (1) a basic orientation of the duties they perform; and
- (2) at a minimum, basic information about the organization's mission, philosophy, and policies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702338

Steve Aragón

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Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## DIVISION 7. SERVICE DELIVERY

### 1 TAC §§379.2101 - 379.2121

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### Statutory Authority

The repeals are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed repeals affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed repeals.

- §379.2101. *What services must the nonresidential center provide?*
- §379.2102. *What requirements must the nonresidential center meet for the crisis call hotline?*
- §379.2103. *What crisis call hotline procedures must the nonresidential center have?*
- §379.2104. *Can the nonresidential center use caller ID on the crisis call hotline?*
- §379.2105. *Can the nonresidential center subcontract the answering of the crisis call hotline?*
- §379.2106. *What procedures must the nonresidential center have for delivery of DHS-contracted services?*
- §379.2107. *What information must the nonresidential center cover in the program participant's orientation?*
- §379.2108. *What kind of intervention services must the nonresidential center provide to adult program participants?*
- §379.2109. *Who can provide the nonresidential center intervention services?*
- §379.2110. *How often should the nonresidential center provide intervention services?*
- §379.2111. *Is the nonresidential center allowed to incorporate religion into the intervention services?*
- §379.2112. *Is the nonresidential center required to help each program participant develop an individual service plan?*

§379.2113. *What are the nonresidential center's requirements regarding group intervention?*

§379.2114. *What are the requirements for the nonresidential center regarding delivery of children's direct services?*

§379.2115. *What is the nonresidential center's responsibility regarding emergency medical services?*

§379.2116. *What legal assistance services must the nonresidential center provide?*

§379.2117. *What are the requirements for the nonresidential center regarding legal assistance?*

§379.2118. *What training and employment services must the nonresidential center provide?*

§379.2119. *Must the nonresidential center maintain a referral system?*

§379.2120. *What policies must the nonresidential center have regarding termination of program participant services?*

§379.2121. *What information about termination of services must the nonresidential center provide program participants?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702339

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



### 1 TAC §§379.2101 - 379.2113

#### Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties.

The proposed new rules affect the Texas Government Code, Chapter 51. No other statutes, articles, or codes are affected by these proposed new rules.

#### §379.2101. Nonresidential Center Services.

The center must provide, at a minimum, access to the following services directly, by referral or through formal arrangements with other agencies, and have written procedures regarding these services as described in this subchapter:

- (1) 24-hour-a-day shelter;
- (2) a crisis call hotline available 24 hours a day;
- (3) emergency medical care;
- (4) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance and developing individual service plans;
- (5) emergency transportation;
- (6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options;

- (7) information about educational arrangements for children;
- (8) information about training for and seeking employment; and
- (9) a referral system to existing community services.

§379.2102. Data Collection.

(a) The center will regularly report complete and accurate data through the data collection system approved by the Commission, using service definitions in Nonresidential Center Provider Manual. Data submission is due by the deadline specified in the contract. The Commission reserves the right to impose sanctions if complete and accurate data are not submitted on time.

(b) In the event that a center may not be able to provide services due to a natural disaster or fire, the affected center will consult with the Commission regarding whether exceptions to data reporting deadlines and data collection service definition should be made.

§379.2103. Crisis Call Hotline.

(a) The center must operate a hotline and comply with the Commission requirements unless another organization located in the nonresidential center's service area provides a hotline that complies with Commission requirements.

(b) If the center operates the hotline, it must:

- (1) answer the hotline 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training;
- (2) accept collect calls and anonymous incoming calls;
- (3) list the hotline number in all telephone books within the center's service area and on the center's website, if applicable;
- (4) provide a minimum of two hotline telephone lines;
- (5) ensure the caller has direct access to a live person who is trained to assess the person's safety and that a messaging system is not used to answer the hotline;
- (6) provide Caller ID blocks on the center's numbers for outgoing calls to program participants and other victims of family violence, which may only be unblocked with permission from the program participant or victim of family violence;
- (7) ensure the screening process complies with all state and federal laws if the hotline is used to screen for eligibility for services;
- (8) keep all hotline calls and any related documentation confidential;
- (9) provide meaningful access to persons with disabilities, including victims of family violence with sensory and speech impairments;
- (10) if the center uses Caller ID or any other technology that establishes a record of calls on the hotline, the center must:
  - (A) ensure there will not be a breach of confidentiality to third parties; and
  - (B) limit access to the records generated by these devices; and
- (11) ensure the center is able to provide meaningful access to people with limited English proficiency.

§379.2104. Subcontracting the Crisis Call Hotline.

If the center subcontracts the answering of the hotline, it must have the subcontractor arrangement approved by the Commission and must

have a written policy that addresses how the subcontractor meets the Commission's training requirements for all direct service staff and will ensure immediate access to the center's 24-hour-a-day services.

§379.2105. Medical Care.

The center is not required to provide or pay for emergency medical care, but must:

- (1) maintain a current list of emergency medical care resources that can provide medical services for victims of family violence; and
- (2) provide or arrange for emergency transportation to and from emergency medical facilities for program participants or victims of family violence being considered for acceptance as program participants.

§379.2106. Program Participant's Orientation.

The center must ensure the orientation is provided orally and in writing, is documented and includes, but is not limited to:

- (1) explanation of services available;
- (2) termination policy;
- (3) program participants' rights;
- (4) nondiscrimination statement;
- (5) grievance procedures;
- (6) safety and security procedures;
- (7) confidentiality and limits of confidentiality; and
- (8) waivers of liability.

§379.2107. Individual Service Plans.

The center must develop a written individual service plan with each program participant that reflects the program participant's particular needs.

§379.2108. Group Intervention.

(a) The center must provide at least one weekly support group for adult program participants, but must not mandate program participant attendance for weekly support groups; and

(b) If the center provides direct intervention family violence services, it must not use state funds for inherently religious activities, must not promote any one religion, and must not require program participants to participate in religious groups or to use religious materials.

§379.2109. Delivery of Children's Direct Services.

The center must:

- (1) at a minimum, offer social or recreational activities for children while the adult parent is receiving services; and
- (2) have services available that are specific to meet the needs of children.

§379.2110. Safety Policies and Procedures for Delivering Services to Children.

(a) The center must have and endorse written nonviolent disciplinary policies and procedures regarding child nonresidents, including policies and procedures for adult program participants, employees, and volunteers who provide services to children.

(b) The center must have written policies and procedures to:

- (1) ensure the safety of children in its facilities; and
- (2) maintain the safety of children when employees or volunteers take children on outings.

§379.2111. Texas Department of Family and Protective Services' (DFPS) Childcare Licensing Regulations.

If it is determined that the center is subject to DFPS child care licensing regulations, the center must have written policies and procedures to ensure compliance with those rules and regulations.

§379.2112. Legal Assistance Services.

The center must:

(1) maintain a current list of local criminal justice agencies and contact people in each county where services are provided;

(2) offer support and accompaniment to program participants in their pursuit of legal options;

(3) ensure legal advocacy services are available and specific to the needs of victims of family violence; and

(4) encourage the justice system to respond consistently to the needs of victims of family violence and to hold batterers accountable.

§379.2113. Training and Employment Services.

The center must provide or arrange the following for program participants:

(1) assistance preparing employment and training program applications and resumes; and

(2) information on job-seeking skills.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702340

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-6900



## **TITLE 16. ECONOMIC REGULATION**

### **PART 8. TEXAS RACING COMMISSION**

#### **CHAPTER 303. GENERAL PROVISIONS**

#### **SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION**

##### **16 TAC §303.41**

The Texas Racing Commission proposes an amendment to §303.41, Allocation of Race Dates. The section proposed for amendment relates to the method by which live race dates are requested and designated under §§8.01, 8.02, and 10.01 of the Act. The purpose of the amendment is to allow the Commission more flexibility in allocating live race dates to the racetrack associations.

The change to §303.41 of the Rules of Racing will modify the timeframe the Commission may designate for live race date applications. The amendment will modify the current race date

application deadline from the July 1 calendar year to a method by which the Commission may designate an application period upon its own motion or upon the request of an association. Once the Commission has designated an application period, the amendment requires the Commission to publicize the application period to the affected associations at least 30 days before the closing date of the period.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will have more flexibility to respond to the changing conditions of the racing industry. The Commission will be able to consider and allocate race dates for time periods longer or shorter than one year. The Commission will also be able to separately consider and allocate race dates by track class.

There is no anticipated economic cost to an individual required to comply with the proposed amendment.

There are no foreseeable implications relating to costs or revenues for small or micro-businesses as a result of enforcing or administering the proposed amendment.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

By allowing the Commission greater flexibility to respond to the needs of the racing industry when allocating race dates, this amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §§3.02 and 3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and §§8.01, 8.02, and 10.01, which pertain to the authorization of the Commission to allocate live race dates.

The amendment implements Texas Civil Statutes, Article 179e.

##### *§303.41. Allocation of Race Dates.*

(a) The commission shall allocate live race dates, including charity days, to each association for such time periods and at such racing locations as the commission determines in accordance with the Act and this section.

(b) Upon its own motion or upon the request of any association, the commission may designate an application period during which the commission shall accept applications for race dates.

(c) The commission shall establish the time period or periods for which it will consider granting race dates.

(d) Upon designation by the commission of an application period under this section, the executive secretary shall publicize that application period to the affected greyhound and horse racing associations

at least 30 days before the closing date of the period. ~~[An association shall apply to the commission not later than July 1 of each year for live race dates to be conducted in the next calendar year.]~~

(c) The application must be on a form prescribed by the commission. After the request is filed, the executive secretary may require the association to submit additional information if the executive secretary determines the additional information is necessary to effectively evaluate the request.

(f) ~~[(b)]~~ In allocating race dates under this section, the commission may consider the following factors and the degree to which the association's proposed race meeting will serve to nurture, promote, develop, or improve the horse or greyhound industry in Texas:

(1) the association's current ability to pay all fees and other amounts owed to the commission, to the state, and to local governments;

(2) the association's willingness and ability to comply and past performance in complying with the Rules and the Act;

(3) the current condition of the association's racetrack and facilities for patrons, race animals, and occupational licensees;

(4) the anticipated effect of the proposed race meeting on the continuity of racing during the year;

(5) the live race dates requested by other associations licensed to conduct races for the same species of animal;

(6) the anticipated overall economic effect to the state from the race meeting;

(7) the anticipated effect of the race meeting on the greyhound or horse breeding industry in Texas;

(8) the anticipated effect of scheduled race meetings in neighboring race states on the proposed race meeting; and

(9) the anticipated availability of race animals for the race meetings.

(g) ~~[(e)]~~ The commission shall approve the actual days awarded, and the total number of performances. The commission may require a minimum number of races in a race meet.

(h) ~~[(d)]~~ An association shall conduct pari-mutuel racing on each race date granted under this section, and in accordance with the race date calendar approved by the Commission, unless the association receives the prior approval of the executive secretary.

(i) ~~[(e)]~~ If circumstances beyond the control of the association prevent the association from conducting a performance, the commission may award a make-up performance.

(j) ~~[(f)]~~ Change in Race Date Allocation.

(1) The executive secretary may permit an association to request additional live race dates after its request under this section has been acted on by the commission if the executive secretary determines that:

(A) the request includes evidence that granting the additional live race dates will enhance the breeding and training industries for horses or greyhounds;

(B) the association's failure to request the live race dates initially was not due to the association's neglect; and

(C) if the request duplicates a request by the association that has already been denied by the commission, changed circumstances exist that necessitate additional consideration by the commission.

(2) An association may request a change to the live race dates granted by the commission provided the association obtains the approval of all associations that are affected by the proposed change. This subsection applies to any proposed change to the number or format of live race dates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702362

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 833-6699



## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

### SUBCHAPTER A. RACETRACK LICENSES

#### 16 TAC §309.6

The Texas Racing Commission proposes an amendment to §309.6, Security for Compliance. The section proposed for amendment relates to the security that racetrack associations must post under §6.04(b) of the Texas Racing Act, Texas Civil Statutes, Article 179e. The purpose of the security is to ensure an association's compliance with the Act and the Rules and to ensure that an association completes its racetrack facilities and starts racing by the dates approved by the Commission.

The change will clarify that §6.04(b) of the Texas Racing Act allows the Commission to require security from both new and existing racetrack associations. The change will enable the Commission to require security from an existing association that does not have a racetrack facility and that does not have security currently posted. The change will also enable the Commission to require security from an existing licensee that does have a racetrack facility, but that did not conduct live racing in the previous calendar year and does not have security currently posted.

The change will not require security from an association that does have a racetrack facility and that did conduct live racing in the previous calendar year.

The change will establish criteria that the agency will consider in determining the amount of the required security. These criteria include the amounts of revenue that will be lost to the state's general revenue fund, to the Texas Bred Incentive Programs, and to the Commission's general revenue dedicated accounts if simulcast and live racing do not begin on the dates approved by the Commission.

The change clarifies that any interest earned on security posted as United States Treasury Bonds or through irrevocable assignments of federally insured deposits will remain the property of the association.

The change requires the forfeiture of such amounts as appropriate for the amount of revenue lost to the state's general revenue fund and to the Texas Bred Incentive Programs should an association fail to conduct live or simulcast racing by the dates approved by the Commission.

The change clarifies that any portion of the security may be forfeited to the Commission for any accrued fees, penalties or interest owed by the association. After the association completes its first live race meet, any remaining security will be returned to the association.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect that there may be fiscal implications for state government as a result of enforcing the amendment. If an association fails to start live or simulcast racing by the dates approved by the Commission, the Commission will forfeit to the state's general revenue fund that portion of the security that is appropriate to compensate the state for the pari-mutuel tax revenue lost as a result of the failure to start racing. The exact amount of forfeiture would be established by Order for each racetrack that is subject to the security requirement. Based on current projections, the pari-mutuel tax on a Class 2 license will range from approximately \$700 to \$1,050 per day. In addition, the Commission may forfeit a portion of the security for any fees, penalties, or interest due the Commission.

Ms. King has determined that there will be no fiscal implications for local government as a result of enforcing the amendment.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that holders of inactive licenses will be encouraged to construct a racetrack and start conducting live and simulcast racing. As a result, local economies will be strengthened from the new construction and new employment opportunities at the racetrack; local trainers and owners will benefit from the increased racing opportunities and additional purses; the agricultural economy will benefit from increased demand for hay, feed, and tack, as well as increased demand for related services.

There is no anticipated economic cost to an individual required to comply with the proposed amendment.

There are foreseeable implications relating to costs or revenues for small or micro-businesses as a result of enforcing or administering the proposed amendment. Although the Commission will return the security to those associations that comply with an Order for Security, those associations who fail to comply will lose a portion of the security for each missed day as a result. Based on current projections, the total amount forfeited by a Class 2 racetrack per missed simulcast day will be approximately \$950 to \$1,800. The total amount forfeited by a Class 2 racetrack per missed live race day will be approximately \$950 to \$1,200. Any interest earned on security will remain the property of the association.

Some small and micro-businesses will benefit from the proposed amendment since the security also ensures that appropriate payments are made to the Texas Bred Incentive Programs. The Texas Bred Incentive Programs are an economic development program intended to promote, develop and improve the breeding of race animals within the state. Proceeds are used to supplement purses, fund breeder and owner awards, and support breed registries. As a result, this amendment will benefit those small and micro-businesses in the breeding, training, and related agricultural industries.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

By encouraging the construction of race tracks, encouraging the conduct of live and simulcast racing, and providing for contribu-

tions to the Texas Bred Incentive Programs, this amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the Texas Register to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §§3.02 and 3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and §6.04(b), which requires applicants to post security to ensure compliance with the Act and the Rules of the Commission.

The amendment implements Texas Civil Statutes, Article 179e.

§309.6. *Order for Security for Compliance.*

(a) An association must post security in an amount determined by the Commission to adequately ensure:

(1) the association's compliance with the Act and the Rules;

(2) the association's completion of the racetrack facilities on or before the date approved by the Commission;

(3) the start of simulcast racing on or before the date approved by the Commission; and

(4) the start of live racing on or before the date approved by the Commission. [Not later than 10 business days after the Commission's order issuing a racetrack license to an applicant under this chapter becomes final and unappealable, the applicant must post security in an amount determined by the Commission to adequately ensure the association's compliance with the Act and the Rules and the association's completion of the racetrack facilities and the start of racing on the date approved by the Commission. The amount of the security must be reasonable in relation to the amount of revenue that will be lost if the association fails to start racing on the date approved by the Commission.]

(b) Not later than 10 business days after the Commission issues its security order, the association must submit the security amount as directed. [Cash; cashier's checks; surety bonds; irrevocable bank letters of credit; United States Treasury bonds that are readily convertible to cash; or irrevocable assignments of federally insured deposits in banks, savings and loan institutions; and credit unions are acceptable as security for purposes of this section.]

(c) If an association has not posted security, either because the Commission did not originally require the association to post security or because the association has already forfeited its security, and the association has not completed its racetrack facilities or has failed to conduct live racing in the previous calendar year, the Commission may:

(1) approve a new date by which the association must complete its racetrack facilities;

(2) approve a date by which the association must begin simulcast racing;

(3) approve a date by which the association must begin live racing; and

(4) require the association to post security in amount determined by the Commission. [If an association fails to start racing on

the date approved by the Commission, the Commission may forfeit any portion of the security that is appropriate for the amount of revenue lost due to the failure to start racing.]

(d) In determining the amount of the security that the association shall post, the Executive Secretary shall prepare a security estimate proposal to be submitted to the Commission for consideration. In preparing the security estimate proposal the Executive Secretary shall:

(1) make security estimate calculations using wagering and operations data from:

(A) the association's application if the site location is the same as that provided in the original application; or

(B) updated data provided by the association at the request of the Executive Secretary if the site location is different from that included within the original application.

(2) make security estimate calculations based on the following criteria:

(A) pari-mutuel tax due the general revenue fund from live wagering pools;

(B) pari-mutuel tax due the general revenue fund from simulcast same species wagering pools;

(C) pari-mutuel tax due the general revenue fund from simulcast cross-species wagering pools;

(D) the Racing Commission's general revenue dedicated account from live wagering pools and breakage;

(E) Texas Bred Incentive Program funds due the Racing Commission's general revenue dedicated account from simulcast same species wagering pools and breakage;

(F) Texas Bred Incentive Program funds due the Racing Commission's general revenue dedicated account from simulcast cross-species wagering pools and breakage;

(G) race day fees due the Racing Commission's general revenue dedicated account from live wagering as detailed under Section 309.8, Racetrack License Fees; and

(H) race day fees due the Racing Commission's general revenue dedicated account from simulcast wagering as detailed under Section 309.8, Racetrack License Fees. [After the association begins racing, the Commission shall return the remaining security to the association.]

(e) Cash, cashier's checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, or irrevocable assignments of federally insured deposits in banks, savings and loan institutions, and credit unions are acceptable as security for purposes of this section. Interest earned on a United States Treasury bond or on an irrevocable assignment of a federally insured deposit is not subject to the assignment and remains the property of the association.

(f) If an association fails to conduct simulcast racing by the date approved by the Commission, the Commission shall forfeit to the state's general revenue fund and to the Texas Bred Incentive Programs that portion of the security that is appropriate for the amount of revenue lost to those funds. Exceptions to this requirement may be allowed only if the association's failure to conduct live racing by the date approved by the Commission was due to an emergency that the Commission determines was unforeseeable and beyond the association's control.

(g) If an association fails to conduct live racing by the date approved by the Commission, the Commission shall forfeit to the state's

general revenue fund and to the Texas Bred Incentive Programs that portion of the security that is appropriate for the amount of revenue lost to those funds. Exceptions to this requirement may be allowed only if the association's failure to conduct live racing by the date approved by the Commission was due to an emergency that the Commission determines was unforeseeable and beyond the association's control.

(h) If an association is liable to the Commission for any accrued fees, penalties or interest, the Commission may forfeit any portion of the security that is appropriate for those fees, penalties or interest.

(i) After the association completes its first live race meet after posting security under this section, the Commission shall return the remaining security to the association.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702361

Mark Fenner

General Counsel

Texas Racing Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 833-6699



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS**

The Texas Education Agency (TEA) proposes amendments to §§89.1205, 89.1220, 89.1225, and 89.1250; new §89.1207; and the repeal of §89.1260, concerning the state plan for educating limited English proficient students. The proposed amendment to §89.1205 and proposed new §89.1207 would revise the process of applying for a bilingual exception and/or an English as a second language (ESL) waiver. The other proposed amendments would add language regarding the transfer of students out of a special language program in accordance with House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006; provide clarification on serving students who receive both special language and special education services; and address submission of information for summer school programs. Section 89.1260 would be repealed to remove monitoring requirements no longer authorized in statute.

In accordance with the Texas Education Code (TEC), Chapter 29, Subchapter B, Bilingual Education and Special Language Programs, the commissioner exercised rulemaking authority establishing rules to guide the implementation of bilingual education and special language programs. The commissioner's rules in 19 TAC Chapter 89, Subchapter BB, adopted to be effective September 1, 1996, establish the policy that every student in the state who has a home language other than English and who is identified as limited English proficient shall be provided a full opportunity to participate in a bilingual education or ESL program. These rules outline the requirements of the bilingual and ESL programs, including program content and design, home language survey, the language proficiency assessment committee

(LPAC), testing and classification, facilities, parental authority and responsibility, staffing and staff development, required summer school programs, monitoring of programs, and evaluation. Rules in 19 TAC Chapter 89, Subchapter BB, were amended to be effective April 2002. During the statutorily-required rule review of rules in 19 TAC Chapter 89 in 2006, staff identified the need to update the rules. The proposed revisions to 19 TAC Chapter 89, Subchapter BB, include the following proposed rule changes.

Section 89.1205, Required Bilingual Education and English as a Second Language Programs, would be amended to delete subsections (g) and (h) regarding bilingual education program exceptions and ESL program waivers. This information would be moved to proposed new §89.1207, Exceptions and Waivers, and would include criteria upon which approval would be granted and, if denied, would provide for an appeal. The proposed new section would also allow for a special accreditation investigation when a district is denied an exception or waiver for more than three consecutive years or has excessive numbers of allowable exemptions.

Section 89.1220, Language Proficiency Assessment Committee, would be amended by revising subsection (l) to indicate that a student's exit from a bilingual or ESL program will occur in accordance with the TEC, §29.0561, as added by HB 1, Third Called Session, 2006. A technical update would be made for clarification in subsection (i)(5) regarding reference to the state English language proficiency assessment in reading.

Section 89.1225, Testing and Classification of Students, would be amended to clarify the process by which testing will be determined for students who receive both special education and special language services. Subsection (f) would be revised to add language for determining the appropriate assessment and designated performance level by the admission, review, and dismissal committee in conjunction with the LPAC in response to a student individual education program. Subsection (h) would be revised to establish exit criteria in accordance with HB 1, Third Called Session, 2006. Subsection (k) would be added to include language clarifying the process by which students who receive both special education and special language services are exited from a bilingual education or ESL program.

Section 89.1250, Required Summer School Programs, would be amended to address requirements for district submission of information and eligibility for funding in paragraph (4)(A).

Section 89.1260, Monitoring of Programs and Enforcing Law and Commissioner's Rules, would be repealed since the state statute (TEC) no longer authorizes monitoring in this manner.

The proposed amendment to 19 TAC §89.1205 represents a change in the information collected from school districts. Under current rule, 19 TAC §89.1205(g) and (h), school districts must submit an exception, a waiver, or an assurance. Under the proposed new rule, 19 TAC §89.1207, school districts must submit exceptions or waivers. In addition, the proposed amendment to 19 TAC §89.1250 would revise reporting requirements for information about English language learners entering kindergarten or first grade. The proposed revision would relate to submission of data on summer school attendees for funding purposes.

The proposed revisions to 19 TAC Chapter 89, Subchapter BB, include an amendment to 19 TAC §89.1220, Language Proficiency Assessment Committee, that would increase the frequency with which the LPAC monitors certain students' academic progress in accordance with the TEC, §29.0561.

Also in response to legislation, an amendment to 19 TAC §89.1225, Testing and Classification of Students, would require ARD committees, in conjunction with LPACs, to determine appropriate assessment instruments and levels of performance for certain students. Districts may incur additional locally maintained paperwork in order to comply with these new legislative requirements enacted by HB 1, Third Called Session, 2006.

Susan Barnes, associate commissioner for standards and programs, has determined that, for the first five-year period the proposed amendments, new section, and repeal are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments, new section, and repeal.

Dr. Barnes has determined that, for each year of the first five years the proposed amendments, new section, and repeal are in effect, the public benefit anticipated as a result of enforcing the proposed rule actions would be further clarification for serving bilingual and ESL students. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments, new section, and repeal.

The public comment period on the proposed amendments, new section, and repeal to 19 TAC Chapter 89, Subchapter BB, begins June 22, 2007, and ends July 22, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments, new section, and repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

## SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING LIMITED ENGLISH PROFICIENT STUDENTS

### 19 TAC §§89.1205, 89.1207, 89.1220, 89.1225, 89.1250

The amendments and new section are proposed under the Texas Education Code, §29.056, which authorizes the agency to adopt rules relating to the identification, assessment, and classification of students of limited English proficiency eligible for entry into the program or exit from the program. Texas Education Code, §29.054, addresses exceptions to bilingual education programs. Texas Education Code, §29.0561, addresses evaluation and reenrollment of exited bilingual students. Texas Education Code, §29.060, establishes preschool, summer school, and extended time programs for bilingual and special language programs.

The proposed amendments and new section implement the Texas Education Code, §§29.051, 29.054, 29.056, 29.0561, and 29.060.

*§89.1205. Required Bilingual Education and English as a Second Language Programs.*

(a) Each school district which has an enrollment of 20 or more limited English proficient students in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the limited English

proficient students in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.

(b) A district shall provide a bilingual education program by offering a dual language program in prekindergarten through the elementary grades, as described in §89.1210 of this title (relating to Program Content and Design).

(c) Districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.

(d) All limited English proficient students for whom a district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.

(e) A district shall provide an English as a second language program by offering an English as a second language program as described in §89.1210 of this title (relating to Program Content and Design).

(f) Districts may join with other districts to provide bilingual education or English as a second language programs.

[(g) Districts which are unable to provide a bilingual education program as required by subsection (a) of this section shall request from the commissioner of education an exception to the bilingual education program and approval to offer an alternative program. Approval of exceptions to the bilingual education program shall be negotiated on an individual basis and shall be valid for only the school year for which it was negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:]

[(1) a statement of the reasons the district is unable to offer the bilingual education program with supporting documentation;]

[(2) a description of the proposed alternative modified bilingual education or intensive English as a second language programs to meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner in which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);]

[(3) an assurance that certified personnel available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the limited English proficient students with beginning levels of English proficiency are served on a priority basis;]

[(4) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed alternative program, and an assurance that at least 10% of the bilingual education allotment shall be used to carry out this training program; and]

[(5) a description of the actions the district will take to ensure that the program required under subsection (a) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent exceptions.]

[(h) Districts which, because of an insufficient number of certified teachers, are unable to provide an English as a second language program as required by subsection (d) of this section shall request from

the commissioner of education a waiver of the certification requirements for the teachers who will provide the instruction in English as a second language for the limited English proficient students. Approval of waivers of certification requirements shall be negotiated on an individual basis and shall be valid for only the school year for which they were negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:]

[(1) a statement of the reasons the district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;]

[(2) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient student, including the manner by which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);]

[(3) an assurance that certified personnel available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students with the lower levels of English proficiency are served on a priority basis;]

[(4) the names of the teachers not on permit who are assigned to implement the English as a second language program and estimated date for the completion of the English as a second language endorsement for each teacher under a waiver;]

[(5) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed English as a second language program, and an assurance that at least 10% of the bilingual education allotment shall be used to carry out this training; and]

[(6) a description of the actions the district will take to ensure that the program required under subsection (d) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent waivers.]

#### §89.1207. Exceptions and Waivers.

##### (a) Bilingual education program.

(1) Exceptions. A district that is unable to provide a bilingual education program as required by §89.1205(a) of this title (relating to Required Bilingual Education and English as a Second Language Programs) shall request from the commissioner of education an exception to the bilingual education program and the approval of an alternative program. The approval of an exception to the bilingual education program shall be valid only during the school year for which it was granted. A request for a bilingual education program exception must be submitted by October 1 and shall include:

(A) a statement of the reasons the district is unable to offer the bilingual education program with supporting documentation;

(B) a description of the proposed alternative modified bilingual education or intensive English as a second language programs designed to meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title (relating to Curriculum Requirements);

(C) an assurance that certified teachers available in the district will be assigned to grade levels beginning at prekindergarten



followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the limited English proficient students with beginning levels of English proficiency are served on a priority basis;

(D) a description of the training program which the district will provide to improve the skills of the certified teachers that are assigned to implement the proposed alternative program, and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training program; and

(E) a description of the actions the district will take to ensure that the program required under §89.1205(a) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent exceptions and measurable targets for the subsequent year.

(2) Approval of exceptions. Bilingual education program exceptions will be granted by the commissioner of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student performance on the required state assessments;

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(E) of this subsection submitted the previous year and approved by the Texas Education Agency (TEA); or

(C) reduces by 25% the number of teachers under exception for bilingual Spanish programs when compared to the number of exceptions granted the previous year.

(3) Denial of exceptions. A district denied a bilingual education program exception must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A district denied a bilingual education program exception may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.075, if a district:

(A) is denied a bilingual education program exception for more than three consecutive years; or

(B) is granted an exception based on meeting or exceeding the state average for limited English proficient student performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.

(6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.131.

(b) English as a second language program.

(1) Waivers. A district that is unable to provide an English as a second language program as required by §89.1205(d) of this title because of an insufficient number of certified teachers shall request from the commissioner of education a waiver of the certification requirements for each teacher who will provide instruction in English as a second language for limited English proficient students. The approval of a waiver of certification requirements shall be valid only during the school year for which it was granted. A request for an English as a

second language program waiver must be submitted by October 1 and shall include:

(A) a statement of the reasons the district is unable to provide a sufficient number of certified teachers to offer the English as a second language program;

(B) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner through which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 of this title;

(C) an assurance that certified teachers available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels in the elementary school campus, and on the basis of need for secondary campuses, to ensure that the linguistic and academic needs of the limited English proficient students with the lower levels of English proficiency are served on a priority basis;

(D) the name of each teacher not on permit who is assigned to implement the English as a second language program and estimated date for the completion of the English as a second language supplemental certification for each teacher under a waiver, which must be completed by the end of the school year for which the waiver was requested;

(E) a description of the training program which the district will provide to improve the skills of the certified teachers that are assigned to implement the proposed English as a second language program, and an assurance that at least 10% of the bilingual education allotment shall be used to fund this training; and

(F) a description of the actions the district will take to ensure that the program required under §89.1205(d) of this title will be provided the subsequent year, including its plans for recruiting and training an adequate number of certified teachers to eliminate the need for subsequent waivers.

(2) Approval of waivers. English as a second language waivers will be granted by the commissioner of education if the requesting district:

(A) meets or exceeds the state average for limited English proficient student performance on the required state assessments; or

(B) meets the requirements and measurable targets of the action plan described in paragraph (1)(D) of this subsection submitted the previous year and approved by the TEA.

(3) Denial of waivers. A district denied an English as a second language program waiver must submit to the commissioner of education a detailed action plan for complying with required regulations for the following school year.

(4) Appeals. A district denied an English as a second language waiver may appeal to the commissioner or the commissioner's designee. The decision of the commissioner or commissioner's designee is final and may not be appealed further.

(5) Special accreditation investigation. The commissioner may authorize a special accreditation investigation under the TEC, §39.075, if a district:

(A) is denied an English as a second language waiver for more than three consecutive years; or

(B) is granted a waiver based on meeting or exceeding the state average for limited English proficient student performance on the required state assessments but has excessive numbers of allowable exemptions from the required state assessments.

(6) Sanctions. Based on the results of a special accreditation investigation, the commissioner may take appropriate action under the TEC, §39.131.

§89.1220. *Language Proficiency Assessment Committee.*

(a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).

(b) In districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.

(c) In districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel and a parent of a limited English proficient student participating in the program designated by the district.

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of limited English proficient students.

(f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

(g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all limited English proficient students identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:

(1) designate the language proficiency level of each limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);

(2) designate the level of academic achievement of each limited English proficient student;

(3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;

(4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the district with either state or federal funds; and

(5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), and recommend their exit from the bilingual education or English as a second language program.

(h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the appropriate assessment option for each limited English proficient student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments). The assessment options shall be:

(1) administration of the English version criterion-referenced test;

(2) administration of the Spanish version criterion-referenced test; or

(3) for certain immigrant students, exemption from the criterion-referenced test.

(i) In determining the appropriate assessment option, the language proficiency assessment committee shall consider the following criteria for each student:

(1) academic program participation (bilingual education or English as a second language) and language of instruction;

(2) language proficiency, including literacy, in English and/or Spanish;

(3) number of years enrolled in U.S. schools;

(4) previous testing history;

(5) level achieved on ~~in~~ the state English language proficiency assessment in reading ~~[proficiency tests in English (RPTE)]~~ ;

(6) consecutive years of residence outside of the 50 U.S. states; and

(7) schooling outside the U.S.

(j) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.

(k) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education allotment.

(l) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program in accordance with the Texas Education Code, §29.0561. ~~[within the past two years to determine whether the student is academically successful as defined in §89.1225(j) of this title (relating to Testing and Classification of Students): Those students who are not academically successful due to limited English proficiency shall be reclassified as limited English proficient (LEP), and shall be recommended for participation in a bilingual education or English as a second language program. Students who are not reclassified as LEP may be placed in compensatory and accelerated instruction or other special language program which addresses their needs.]~~

(m) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:

- (1) the identification of the student as limited English proficient;
- (2) the designation of the student's level of language proficiency;
- (3) the recommendation of program placement;
- (4) parental approval of entry or placement into the program;
- (5) the dates of entry into, and placement within, the program;
- (6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, and additional instructional interventions provided to students to ensure adequate yearly progress;
- (7) the date of exit from the program and parent notification; and
- (8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

§89.1225. *Testing and Classification of Students.*

(a) For identifying limited English proficient students, districts shall administer to each student who has a language other than English as identified on the home language survey:

- (1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and
- (2) in Grades 2-12, a TEA-approved oral language proficiency test and the English reading and English language arts sections from a TEA-approved norm-referenced measure, or another test approved by TEA, unless the norm-referenced measure is not valid in accordance with subsection (f)(2)(C) of this section.

(b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' level of proficiency using informal oral language assessment measures.

(c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.

(d) The grade levels and the scores on each test which shall identify a student as limited English proficient shall be established by TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores annually and update the list.

(e) Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.

(f) For entry into a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria.

- (1) At prekindergarten through Grade 1, the score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.
- (2) At Grades 2-12:

(A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;

(B) the student's score on the reading and language arts sections of the TEA-approved norm-referenced measure at his or her grade level is below the 40th percentile; or

(C) the student's ability in English is so limited that the administration, at his or her grade level, of the reading and language arts sections of a TEA-approved norm-referenced assessment instrument or other test approved by TEA is not valid.

(3) In the absence of data required in paragraph (2)(B) of this subsection, evidence that the student is not academically successful as defined in subsection (j) of this section is required.

(4) The admission review and dismissal (ARD) committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and designated level of performance for indicating limited English proficiency as required under subsection (d) of this section for students for whom those tests would be inappropriate as part of the individualized education program (IEP). The decision for entry into a bilingual education or English as a second language program shall be determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee).

(g) Within the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient and enrolled into the required bilingual education or English as a second language program. Prekindergarten and kindergarten students preregistered in the spring shall be identified as limited English proficient and enrolled in the required bilingual education or English as a second language program within four weeks of the start of the school year in the fall.

(h) For exit from a bilingual education or English as a second language program, a student may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a regular, all-English, instructional program. This determination shall be based upon all of the following:

(1) TEA-approved tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in English;

(2) satisfactory performance on the reading assessment instrument under the Texas Education Code, §39.023(a), or an English language arts assessment instrument administered in English, or a score at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced assessment instrument for a student who is enrolled in Grade 1 or 2; and

(3) TEA-approved criterion-referenced written tests when available and the results of a subjective teacher evaluation.

{(4) This determination shall be based upon tests that measure the extent to which the student has developed oral and written language proficiency and specific language skills in both the student's primary language (for students enrolled in bilingual education) and English, and one of the following:-}

{(A) meeting state performance standards for the English language criterion-referenced assessment instrument for reading and writing (when available) required in the Texas Education Code (TEC), §39.023, at grade level; or}

~~{(B) scoring at or above the 40th percentile on both the English reading and the English language arts sections of a TEA-approved norm-referenced assessment instrument.}~~

~~{(2) In making this determination, districts shall also consider other indications of a student's overall progress, including criterion-referenced test scores, subjective teacher evaluation, and parental evaluation.}~~

(i) A student may not be exited from the bilingual education or English as a second language program in prekindergarten through Grade 1. A district must ensure that limited English proficient students are prepared to meet academic standards required by TEC, §28.0211.

(j) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year:

(1) the student meets state performance standards in English of the criterion-referenced assessment instrument required in the Texas Education Code, §39.023, for the grade level as applicable; and

(2) the student has passing grades in all subjects and courses taken.

(k) The ARD committee in conjunction with the language proficiency assessment committee shall determine an appropriate assessment instrument and performance standard requirement for exit under subsection (h) of this section for students for whom those tests would be inappropriate as part of the IEP. The decision to exit a student who receives both special education and special language services from the bilingual education or English as a second language program is determined by the ARD committee in conjunction with the language proficiency assessment committee in accordance with applicable provisions of subsection (h) of this section.

*§89.1250. Required Summer School Programs.*

Summer school programs that are provided under the Texas Education Code, §29.060, for children of limited English proficiency who will be eligible for admission to kindergarten or first grade at the beginning of the next school year shall be implemented in accordance with this section.

(1) Purpose of summer school programs.

(A) Limited English proficient students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.

(B) Instruction shall focus on language development and essential knowledge and skills appropriate to the level of the student.

(C) The program shall address the affective, linguistic, and cognitive needs of the limited English proficient students in accordance with §89.1210(c) and §89.1210(e) of this title (relating to Program Content and Design).

(2) Establishment of, and eligibility for, the program.

(A) Each district required to offer a bilingual or special language program in accordance with the Texas Education Code, §29.053, shall offer the summer program. Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.

(B) To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.

(C) Limited English proficiency shall be determined by screening students using informal oral language inventories or oral proficiency instruments approved by the commissioner of education, or other appropriate instruments.

(3) Operation of the program.

(A) Enrollment in the program is optional with the parents of the student.

(B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for eight weeks or the equivalent of 120 hours of instruction.

(C) The student/teacher ratio for the program district-wide shall not exceed 18 to one.

(D) A district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification or endorsement as required in the Texas Education Code, §29.061, and §89.1245 of this title (relating to Staffing and Staff Development).

(F) Reporting of student progress shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.

(G) A district may join with other districts in cooperative efforts to plan and implement programs.

(H) The summer school program shall not substitute for any other program required to be provided during the regular school term, including those required in the Texas Education Code, §29.153.

(4) Funding and records for programs.

(A) A district shall use state and local funds for program purposes. Districts may use federal funds, consistent with requirements for the expenditure of federal funds, for the program.

(i) Available funds appropriated by the legislature for the support of summer school programs provided under the Texas Education Code, §29.060, shall be allocated to school districts in accordance with this subsection.

(ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner of education. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those districts must demonstrate that they have aggressively attempted to encourage student participation.

(iv) Payment to districts for summer school programs shall be based on units employed. This information must be submitted in a manner and according to a schedule established by the commissioner of education in order for a district to be eligible for funding.

~~{(v) Districts shall apply to the commissioner of education for funding of summer school programs operated under this subsection. Applications for funding shall contain the number of students who will participate in the program and other information nec-~~

essary to assure the commissioner that programs will be operated in accordance with this subsection.]

(B) A district shall maintain records of eligibility, attendance, and progress of students.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702288

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 475-1497



## 19 TAC §89.1260

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Texas Education Code, §7.028, which establishes a limitation on compliance monitoring.

The repeal implements the Texas Education Code, §7.028.

§89.1260. *Monitoring of Programs and Enforcing Law and Commissioner's Rules.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702289

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

#### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

#### SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

### 22 TAC §661.55

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.55, concerning the registration of surveying firms. The amendment is to implement recently passed legislation as a result of H.B. 2820.

The amendment to the rule will clarify the new requirements for registering firms.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because firms offering land surveying services will be required to register their firm with the Board.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §661.55. *Surveying Firms Registration.*

(a) An association, partnership, or corporation offering surveying services shall file a registration form with the Board which identifies; ~~on a form furnished by the Board~~:

(1) the business and legal names and addresses of the association, partnership, or corporation;

(2) the name of the owner or manager of the association, partnership, or corporation; and

(3) the names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any association, partnership, or corporation employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by an association, partnership, or corporation shall notify the Board in writing within five (5) business days prior to leaving employment or no later than 24 hours after leaving employment.

(d) The board may refuse to issue or renew and may suspend or revoke the registration of a business entity and may impose an administrative penalty against the owner of a business entity for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) ~~[(d)]~~ The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any association, partnership, or corporation offering surveying services that fails to comply with this section.

(f) Any firm furnishing contract land surveying crews must have a registered professional land surveyor as a full-time employee in that firm as reflected in its registration form filed with the board.

(g) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702349

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## 22 TAC §661.56

The Texas Board of Professional Land Surveying (TBPLS) proposes new §661.56, concerning the surveying firms renewal and expiration of certificate of registration. The new section is to implement recently passed legislation as a result of H.B. 2820.

The new rule will enact the requirement of §1071.352, concerning Surveying by Business Entity.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will implement procedures for registering firms that offer land surveying services.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

## §661.56. Surveying Firms Renewal and Expiration.

(a) The certificate of registration shall be valid until the last day of the twelfth month following the date of issuance of the certificate of registration. At least one month in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall be mailed to the last address provided by the firm to the Board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(b) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the Board and payment of two (2) times the normal renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether surveying services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(c) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration firm number if the new application is approved.

(d) The renewal fee will not be refundable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702351

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## 22 TAC §661.57

The Texas Board of Professional Land Surveying (TBPLS) proposes new §661.57, concerning compliance with the registration of firms. The new rule is to implement recently passed legislation as a result of H.B. 2820.

The new rule will enact the requirement of the Professional Land Surveying Practices Act, §1071.352, Surveying by Business Entity.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this new rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will implement procedures for registering firms that offer land surveying services.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.57. Surveying Firm Compliance.

(a) Any firm or other business entity shall not offer or perform surveying services to the public unless registered with the board pursuant to the requirements of §661.55 of this title (relating to Survey Firm Registration).

(b) A firm shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all surveying work and activities that require a license that is performed in the primary or branch office(s).

(c) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(d) No surveying services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

(e) A business entity that offers or is engaged in the practice of surveying in Texas and is not registered with the board or has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Matrix).

(f) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the firm.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702352

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## SUBCHAPTER E. CONTESTED CASES

### 22 TAC §661.60

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.60, concerning the Responsibility to the Board. It will implement recently passed legislation as a result of H.B. 2820.

The amendment will further clarify the responsibility a firm has toward the board in registering their firm.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will add the firm registration process as a responsibility to the board.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.60. Responsibility to the Board.

(a) A registrant/licensee/SIT/firm whose registration/license/certification is current or has expired but is renewable under the Texas Professional Land Surveying Practices Act and Board rules, is subject to all provisions of the Act and Board rules. A registrant/licensee/SIT/firm shall respond fully and truthfully to all Board inquiries and furnish all maps, plats, surveys or other information or documentation requested by the Board within 30 days of such registrant's, licensee's, [or] SIT's or firm's receipt of a Board inquiry or request concerning matters under the jurisdiction of the Board. An inquiry or request shall be deemed received on the earlier of:

(1) the date actually received as reflected by a delivery receipt from the United States Postal Service or a private courier or

(2) two days after the Board request or inquiry is deposited in a postage paid envelope in the United States Mail addressed to the registrant, licensee, [or] SIT or firm at his/her last address reflected on the records of the Board.

(b) Any registrant, licensee, [or] SIT or firm subject to Board decisions or orders shall fully comply with the final decisions and orders within any time periods which might be specified in such decisions or orders. Failure to timely, fully and truthfully respond to Board inquiries, failure to furnish requested information, or failure to timely and fully comply with Board decisions and orders, shall constitute separate

offenses or misconduct subject to such penalties as may be imposed by the Board as provided under the Act.

(c) The registrant/licensee/SIT/firm is required to cooperate with all investigations of the board, including but not limited to site inspections, records review and allowing interviews with employees regarding compliance with the Act and Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702353

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## SUBCHAPTER F. FIRMS FURNISHING SURVEYING CREWS

### 22 TAC §661.121

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Professional Land Surveying or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Board of Professional Land Surveying (TBPLS) repeals §661.121, concerning firms furnishing survey crews. This rule is being added to §661.55 which implements legislation of H.B. 2820 concerning surveying by business entity.

The repeal of this rule is to move the language to a rule that will clarify the registration of firms and to implement legislation of H.B. 2820.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this repeal.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will require firms furnishing crews to be registered.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the repeal may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed repeal implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

### §661.121. Firms Furnishing Crews.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702350

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

### 22 TAC §663.17

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §663.17, concerning Monumentation. This section identifies what the registered land surveyor is required to do in regards to monumentation.

The amendment will further clarify the procedures that a land surveyor must follow in setting monumentation for subdivisions.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will clarify the monumentation process.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to [ssmith@txls.state.tx.us](mailto:ssmith@txls.state.tx.us). All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt



and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

*§663.17. Monumentation.*

(a) - (d) (No change.)

(e) Subdivisions that require infrastructure construction must have exterior corner monumentation set prior to plat recordation. It is the responsibility of the surveyor signing the recorded subdivision plat and the Company he/she is registered to work under to ensure that the setting of interior lot and block corners be completed within one calendar year from the date of recordation. In the event of a conflict between this subsection and local ordinances and rules, this subsection will prevail.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702348

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 239-5263



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES**

##### **SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS**

###### **37 TAC §4.1**

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

Amendment to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through June 1, 2007.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehi-

cles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on July 10, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.1 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Government Code, §411.018, and Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-5296 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-5296.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

###### *§4.1. Transportation of Hazardous Materials.*

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through June [March] 1, 2007. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through June [March] 1, 2007.

###### (b) Explanations and Exceptions.

(1) Certain terms when used in the federal regulations as adopted in subsection (a) of this section will be defined as follows:

(A) the definition of motor carrier will be the same as that given in Texas Transportation Code, §643.001(6);

(B) hazardous material shipper means a consignor, consignee, or beneficial owner of a shipment of hazardous materials;

(C) interstate or foreign commerce will include all movements by commercial motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(D) department means the Texas Department of Public Safety;

(E) FMCSA field administrator, as used in the federal motor carrier safety regulations, means the director of the Texas Department of Public Safety or the designee of the director for vehicles operating in intrastate commerce;

(F) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(G) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who transports by commercial motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of commerce.

(2) All references in Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180 made to other modes of transportation, other than by motor vehicles operated on streets and highways of this state, will be excluded and not adopted by this department.

(3) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to farm tank trailers used exclusively to transport anhydrous ammonia from the dealer to the farm. The usage of non-specification farm tank trailers by motor carriers to transport anhydrous ammonia must be in compliance with Title 49, Code of Federal Regulations, §173.315(m).

(4) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway is adopted by the department.

(5) Regulations adopted by this department, including the federal motor carrier safety regulations, will apply to an intrastate motor carrier transporting a flammable liquid petroleum product in a cargo tank. The usage of non-specification cargo tanks by motor carriers for the intrastate transportation of flammable liquid petroleum products must be in compliance with Title 49, Code of Federal Regulations, §173.8.

(6) Regulations and exceptions adopted herein are applicable to all drivers and vehicles transporting hazardous materials in interstate, foreign, or intrastate commerce.

(7) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(8) Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code, Chapter 644, and §4.16 of this title (relating to Administrative Penalties, Payment, Collection and Settlement of Penalties).

(9) A peace officer certified, in accordance with §4.13 of this title (relating to Authority to Enforce, Training and Certificate Requirements), to enforce the Federal Hazardous Material Regulations, as adopted in this section, may declare a vehicle out-of-service using the North American Standard Hazardous Materials Out-of-Service Criteria as a guideline.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702346

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-2135



## SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

### 37 TAC §§4.11, 4.12, 4.15, 4.21

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11, 4.12, 4.15 and 4.21 concerning Regulations Governing Transportation Safety.

The amendment to §4.11 updates the rule so that it reflects June 1, 2007 in subsection (a). The amendment is necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

Amendment to §4.12 is necessary in order to add clarification to subsection (a)(2) of when split sleeper berth time can be used by drivers operating commercial vehicles in intrastate commerce.

Amendment to §4.15 adds a new paragraph (4) to subsection (b) and is necessary in order to clarify the department's enforcement options if a motor carrier's operations pose an imminent hazard.

Amendment to §4.21 reformats the section and is necessary in order to provide that valid positive test results and releases may be made via electronic mail, when the identity of the requestor and the security of the communication have been properly verified. A second amendment to §4.21 is necessary in order to provide that requesters who obtain permission to request and receive release of valid positive test results via electronic mail under the first amendment proposed may also submit reports via electronic mail.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The Texas Department of Public Safety, in accordance with the Administrative Procedures and Texas Register Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on July 10, 2007, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rules §§4.11, 4.12, 4.15, and 4.21 regarding Hazardous Material and Transportation Safety, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Mark Rogers, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Rogers at (512) 424-5296 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Mark Rogers, Major, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-5296.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

#### §4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through June [March] 1, 2007. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through June [March] 1, 2007. The rules adopted herein are to ensure that:

(1) - (4) (No change.)

(b) - (c) (No change.)

#### §4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) (No change.)

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following eight consecutive hours off duty. Drivers in intrastate

commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for eight consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of eight consecutive hours off duty by taking a combination of at least eight consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than two hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) - (7) (No change.)

(b) (No change.)

#### §4.15. Safety Audit Program.

(a) (No change.)

(b) Imminent Hazard.

(1) - (3) (No change.)

(4) For purposes of all enforcement the department is authorized to take, any operations in violation of an Imminent Hazard determination will be treated as operating with a final unsatisfactory rating issued under subsection (a)(4)(D)(iii) of this section.

(c) (No change.)

#### §4.21. Reports of Valid Positive Results on Alcohol and Drug Tests.

(a) Reporting Requirement. An employer required under the federal safety regulations to conduct alcohol and controlled substance testing of employees shall report to the department a valid positive result on an alcohol or controlled substance test performed as part of the carrier's alcohol and drug testing program or consortium, as defined by Title 49, Code of Federal Regulations, Part 382, on an employee of the carrier who holds a commercial driver license issued under Texas Transportation Code, Chapter 522.

(1) (No change.)

(2) Report Submission Requirements.

(A) The report must be submitted on a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>. All information requested on the form must be completed. The completed form must be mailed to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0521, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310. Unless the report is for a refusal to submit a sample, employers must also attach a legible copy of either the Federal Drug Testing, Custody and Control Form (with at least steps one through six completed), the U.S. Department of Transportation (DOT) Alcohol Testing Form (with at least steps one through three completed), or the Medical Review Officer's or Breath Alcohol Technician's report of a positive, diluted, adulterated, or substituted alcohol or drug test.

(B) Any requestor who has obtained permission to request and receive release of information via electronic mail under subsection (b)(2) of this section may also submit reports via electronic mail. The complete report must be filled out in its entirety, and must be clearly scanned with attachments as described in paragraph (2)(A) of this subsection.

(3) - (5) (No change.)

(b) Release of Information. Information regarding Reports of Valid Positive Drug or Alcohol Tests is confidential and only subject to release as provided in Texas Transportation Code, §521.053. A request must be submitted on a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>.

(1) The request form must be mailed to MCS Section Supervisor, Motor Carrier Bureau, Texas Department of Public Safety, 6200 Guadalupe, MSC# 0521, Austin, Texas 78752-4019, or sent by facsimile to (512) 424-5310.

(2) A requester may apply for and obtain permission to request and receive release of information via electronic mail. Electronic mail addresses are subject to initial and continuing verification by the department. A request must be submitted on a form prescribed by the department that is available at the following Internet web site address: <http://www.txdps.state.tx.us/forms>. Once a requester has obtained permission to request and receive information via electronic mail, each individual request must still be made with a clearly scanned copy of the form described in subsection (b) of this section and be in compliance with the requirements of Texas Transportation Code, §521.053.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702347

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 424-2135



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter A, General Provisions, §807.7

The Commission proposes amendments to the following section of Chapter 807, relating to Career Schools and Colleges:

Subchapter I, Application Fees and Other Charges, §807.152

##### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

##### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

##### **PART III. IMPACT STATEMENTS**

##### **PART IV. COORDINATION ACTIVITIES**

##### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The purpose of new §807.7, Exemptions, is to set forth a procedure for the Commission to grant exemptions and hear appeals regarding denied exemptions from the requirement for a certificate of approval. Texas Education Code, Chapter 132, the Career Schools and Colleges Act (Act), provides a list of schools and courses of instruction that may be exempted from the requirements of the Act and do not require a certificate of approval. The statute requires a school to apply to the Commission for approval of such an exemption. The new rule establishes a procedure for approving, denying, or revoking exemptions. In addition, the new rule sets forth a procedure for appealing the denial or revocation of an exemption in the same manner as the denial or revocation of a certificate of approval.

The purpose of amending §807.152 is to more closely track Texas Education Code, Chapter 132, and the flexibility it provides the Commission with regard to the range of renewal fees collected annually from career schools and colleges for purposes of program administration.

Currently, renewal fees are assessed by applying a percentage to the gross tuition and fees, excluding refunds, of a school or college. Texas Education Code §132.201 provides that renewal fees may be set by the Commission in an amount "not to exceed 150 percent" of an amount that is determined by applying a percentage "not to exceed" 0.3%. The rule in its present form does not provide this full range of options and, as such, is more restrictive than the statute.

In adapting to circumstances, as currently, where the Commission may otherwise collect more in fees than necessary to administer Texas Education Code, Chapter 132; amending §807.152 to allow the Commission to annually establish the renewal fee percentage will provide the Commission flexibility in adapting to changing circumstances. The Commission anticipates that the result of this rule amendment, in the near term, will be a lower fee for many schools. Schools currently assessed the minimum fee will not see a reduction as the minimum does not change.

Conversely, by mirroring the provisions of Texas Education Code §132.201, the Commission will have the full range of rate-setting mechanisms to address any increased need for fee income. This proposed change ensures that the collection of renewal fees for certification of career schools and colleges is appropriately set to sufficiently cover the costs of administering the chapter.

##### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

The Commission proposes the following amendments to Subchapter A:

##### **§807.7. Exemptions**

New §807.7(a) provides that a school or educational institution may apply to the Commission for an exemption under §132.002 or §132.003 of the Act.

New §807.7(b) provides that the Commission must grant the requested exemption if the Commission determines that the school

or educational institution meets the statutory requirements for an exemption under §132.002 or §132.003 of the Act.

New §807.7(c) provides that the Commission may deny or revoke an exemption in the same manner as a denial or revocation of a certificate of approval, if the Commission determines that the school or educational institution does not meet the requirements for the exemption under §132.002 or §132.003 of the Act.

New §807.7(d) provides that a school or educational institution may appeal the denial or revocation of an exemption in the same manner as for appealing the denial or revocation of a certificate of approval.

#### SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

The Commission proposes the following amendments to Subchapter I:

##### §807.152. Renewal Fees

Section 807.152 is amended to annually establish the renewal fee percentage, which will provide the Commission flexibility in ensuring that the collection of renewal fees for certification of career schools and colleges is in balance with the cost of administering Chapter 132 of the Act. In adapting to circumstances, as currently, where the Commission may otherwise collect more in fees than necessary to administer Texas Education Code, Chapter 132, enactment of this amendment is anticipated, in the near term, to allow the Commission to lower the fees currently collected and more appropriately fund the program's administration.

#### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules, except in order to collect no more in fees than is necessary to administer Texas Education Code, Chapter 132, Career Schools and Colleges. The express intent of the rules--in amending §807.152 to provide the full range of options as set forth in Texas Education Code §132.201--is to adapt to such circumstances, as currently, where the Commission may otherwise collect more in fees than necessary to administer Chapter 132.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules, except as noted above.

There are no new anticipated economic costs to persons required to comply with the rules and there is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules. It is anticipated that a decrease in aggregate economic costs to persons required to comply with this rule and to small or microbusinesses will probably occur. That is, career schools or colleges will probably pay lower fees as a result of these rules, at least in the near term (those career schools or colleges that currently are assessed the minimum fee will not see a reduction, as the minimum does not change).

Amending §807.152 to allow the Commission to establish the renewal fee percentage annually will provide the Commission flexibility in adapting to circumstances, as currently, where the Commission may otherwise collect more fees than necessary to administer Chapter 132. The anticipated result of this rule amendment will be a lower fee. The provisions of §132.201, Texas Education Code, will also allow the Commission to use the full range of rate-setting mechanisms to address any increased need for fee revenue, although no such need is indicated in the near future.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that only the required amount of funds is collected to sufficiently administer the program and to clarify the process for appealing exemption determinations or redeterminations.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

#### PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 40 TAC §807.7

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

##### §807.7. Exemptions.

(a) A school or educational institution may apply to the Commission for an exemption under §132.002 or §132.003 of the Act.

(b) The Commission shall grant the requested exemption if the Commission determines that the school or educational institution meets the requirements for an exemption under §132.002 or §132.003 of the Act.

(c) The Commission may deny or revoke an exemption in the same manner as a denial or revocation of a certificate of approval, if the Commission determines that the school or educational institution does not meet the requirements for the exemption under §132.002 or §132.003 of the Act.

(d) A school or educational institution may appeal the denial or revocation of an exemption in accordance with the provisions of Subchapter D of the Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2007.

TRD-200702278

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch  
Texas Workforce Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 475-0829

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## SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

### 40 TAC §807.152

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.152. *Renewal Fees.*

(a) For small schools, if a certificate of approval is issued for more than one year, the renewal fee is \$1,001, which may be paid with

\$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.

(b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The Commission will establish the renewal fee on an annual basis, based upon the cost of administration of the chapter. The renewal fee will be set in accordance with the provisions of §132.201 of the Act. [is the greater of:]

~~{(1) 0.31% of the school's gross tuition and fees, excluding refunds as provided by the Act; or}~~

~~{(2) \$500.}~~

(c) For all schools, the Commission shall assess a penalty of 10% of the renewal fee, not less than \$200 or more than \$1,000, if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2007.

TRD-200702279

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery Branch  
Texas Workforce Commission

Earliest possible date of adoption: July 22, 2007

For further information, please call: (512) 475-0829

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 251. REGIONAL PLANS-- STANDARDS

##### 1 TAC §251.6

The Commission on State Emergency Communications (CSEC) withdraws the proposed amendments to §251.6 which appeared in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2427). In the Proposed Rules section of this issue of the *Texas Register*, CSEC has published for comment the proposed repeal of §251.6.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702342

Paul Mallett

Executive Director

Commission on State Emergency Communications

Effective date: June 8, 2007

For further information, please call: (512) 305-6930

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## TITLE 34. PUBLIC FINANCE

### PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

#### CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

##### 34 TAC §306.1

The Office of Fire Fighters' Pension Commissioner withdraws the proposed amendments to §306.1 which appeared in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2979).

Filed with the Office of the Secretary of State on June 6, 2007.

TRD-200702280

Kevin Deiters

Policy Director

Office of the Fire Fighters' Pension Commissioner

Effective date: June 6, 2007

For further information, please call: (512) 936-3372

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 73. LICENSES AND RENEWALS

##### 22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §73.3, relating to continuing education, to increase the number of continuing education credit hours that a licensee who serves as an examiner for the National Board of Chiropractic Examiners' (NBCE) Part IV Examination may receive for this activity from a maximum of two (2) hours each year to a maximum of eight (8) hours each year. The amended rule is adopted without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1824) and will not be republished. The Board formally adopted this amended rule at its regularly scheduled board meeting on May 24, 2007.

No comments were received regarding the proposed amendments.

The Board decided to make this amendment to increase the continuing education credit hours awarded for this activity in recognition of the fact that licensees who serve as examiners for the NBCE Part IV Examination work in excess of eight hours at each session.

The amendment is adopted under the Texas Occupations Code, §201.152 and §201.356 relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.356 authorizes the Board to adopt requirements for mandatory continuing education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 5, 2007.

TRD-200702258

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: June 25, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 305-6901



#### CHAPTER 75. RULES OF PRACTICE

##### 22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.2, relating to proper diligence and efficient practice of chiropractic, to specify that patient abandonment is an example of a lack of due diligence. The amended rule is adopted without changes to the proposed text as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1693) and will not be republished. The Board formally adopted this amended rule at its regularly scheduled board meeting on May 24, 2007.

No comments were received regarding the proposed amendments.

The Board decided to make this amendment so that doctors of chiropractic, patients, and the public are clearly on notice that a doctor of chiropractic cannot simply close their practice without reasonable cause without providing notice to their patients and without providing for the orderly transfer of the patient's records. In drafting this rule, the Board looked to the Texas Medical Board's rule at 22 TAC §165.5, relating to transfer and disposal of medical records, and the State Board of Dental Examiners' rule at 22 TAC §108.5 relating to patient abandonment.

The amendment is adopted under the Texas Occupations Code, §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 5, 2007.

TRD-200702259

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: June 25, 2007

Proposal publication date: March 23, 2007

For further information, please call: (512) 305-6901



##### 22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7 (Required Fees and Charges) relating to the adoption of a new \$10.00 fee for the sale of copies of the statutes and rules and a second new \$55.00 for an online jurisprudence course (seminar) to be presented by the Board. The Board also adopts the reformatted graphic which lists agency fees. The amended rule is adopted with changes to the proposed text as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2090). The Board formally adopted this amended rule at its regularly scheduled board meeting on May 24, 2007.



No comments were received regarding the proposed amendments.

The Board decided to make this amendment to improve services for agency licensees, the public and other stakeholders and to generate sufficient additional revenue to at least cover the anticipated direct and indirect costs of providing these services.

The amendment is adopted under the Texas Occupations Code (TOC), §201.152 and §201.153 relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.153 authorizes the Board to set fees in amounts reasonable and necessary to cover the costs of administering TOC Chapter 201 (the Chiropractic Act).

*§75.7. Required Fees and Charges.*

(a) Current fees required by the board are as follows:

Figure: 22 TAC §75.7(a)

(b) The board is required to increase its fees for annual renewal, an examination, and re-examination by \$200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "153(b) FEE". The total amount of each of these fees must be paid before the board will process an application subject to such fee.

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC, Part 3, Chapter 70, §§70.1 - 70.10 (relating to Copies of Public Information).

- (1) List of New Licensees
- (2) Lists of Licensees
- (3) Licensee Labels
- (4) Demographic Profile
- (5) Facilities List
- (6) Facilities Labels

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 5, 2007.

TRD-200702257

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Effective date: June 25, 2007

Proposal publication date: April 13, 2007

For further information, please call: (512) 305-6901



## PART 11. BOARD OF NURSE EXAMINERS

### CHAPTER 216. CONTINUING EDUCATION

#### 22 TAC §§216.1, 216.3, 216.4, 216.9, 216.11

The Board of Nurse Examiners adopts without changes amendments to 22 Texas Administrative Code §§216.1, 216.3, 216.4, 216.9 and 216.11, relating to Continuing Education. The proposed amendments were published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2452).

Effective January 1, 2007, the contact hour for continuing education was changed from a 50-minute contact hour to a 60-minute contact hour. A contact hour is an organized learning activity that is either a didactic or clinical experience or an independent study. This change was implemented by American Nurses Credentialing Center's Commission on Accreditation. Sections §216.1(8) and §216.4(1) illustrate this change.

The new language of §216.3 is for the purpose of updating the CE requirements by deleting the requirement for RNs to take a CE course relating to Hepatitis C (§216.3(4)) that expired on June 1, 2004. Sections 216.9 and 216.11 address the updated process the Board utilizes to ensure that licensees comply with the CE requirements. In the past, the Staff would randomly audit licensees to determine whether they had complied, and if they did not provide the evidence, an investigation was opened in enforcement. The new process requires audited licensees to prove compliance with CE requisites prior to renewal, and if the proof is not forthcoming, the licensee's license is not renewed (§216.11). This process is also compliant with Texas Occupations Code §301.303(a) that states "the board...may require participation in continuing competency programs as a condition of renewal of a license." It creates a more streamlined process, and alleviates some of the burden imposed on Enforcement; therefore, §216.9(2) requiring the board to "notify the licensee of the results of the audit" becomes an unnecessary provision.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2007.

TRD-200702282

Joy Sparks  
Assistant General Counsel  
Board of Nurse Examiners  
Effective date: June 26, 2007  
Proposal publication date: May 4, 2007  
For further information, please call: (512) 305-6824



## **TITLE 25. HEALTH SERVICES**

### **PART 1. DEPARTMENT OF STATE HEALTH SERVICES**

#### **CHAPTER 61. CHRONIC DISEASES**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §§61.31 - 61.33, 61.36, 61.41 and 61.42, the repeal of §§61.34, 61.35, and 61.37 - 61.40, and new §§61.34, 61.37, and 61.39, concerning the provision of breast and cervical cancer services in this state without changes to the proposed text as published in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9798) and, therefore, the sections will not be republished.

#### **BACKGROUND AND PURPOSE**

The amendments, repeals, and new sections are necessary to assist the department in the implementation of the federal Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101-354, and its re-authorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105-340, which establish a program of grants to states, territories, and tribal organizations for early detection and prevention of mortality from breast and cervical cancer. The department, through a cooperative agreement with the Centers for Disease Control and Prevention, provides statewide access to high-quality breast and cervical cancer screening and diagnostic services for financially eligible Texas women who are unable to access the same care through other funding sources or programs.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.31 - 61.42 have been reviewed, and the department has determined that reasons for adopting §§61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, and 61.42 continue to exist because rules on this subject are needed. The department also has determined that §§61.35, 61.38, and 61.40 are no longer needed, and that the sections should be repealed. There are breaks in the proposed section numbers, as these sections will be reserved for new rules at a later date.

#### **SECTION-BY-SECTION SUMMARY**

Amendments to §§61.31 - 61.33, 61.36, 61.41, and 61.42 incorporate the current department and program names to be consistent with current terminology used by the department.

An amendment to §61.31 removes language specific to the establishment of requirements by certain entities to allow for more flexibility to receive and utilize funding from additional sources. Additionally, §61.31 has been amended to clarify that case management services are included in the breast and cervical cancer services the department provides.

An amendment to §61.32 clarifies that the department manages the delivery of breast and cervical cancer services in accordance with federal requirements utilizing the established statewide program.

An amendment to §61.33 reflects a change in terminology regarding the providers of breast and cervical cancer services.

The repeal and new §61.34 revises language to clarify client eligibility requirements.

Section 61.35 is repealed because the process for selecting and contracting with providers need not be specified by rule.

The amendment to §61.36 allows providers more flexibility to receive and utilize funding from additional sources.

The repeal and new §61.37 removes redundant language and clarify screening requirements for providers.

Section 61.38 is repealed because quality assurance standards have been included in §61.37 to improve clarity.

The repeal and new §61.39 deletes detailed requirements for provision of services that are more appropriate for inclusion in a policy manual.

Section 61.40 is repealed as redundant because the provisions in that section have been included in §§61.31 and 61.36.

The amendment to §61.41 updates terminology concerning the activities performed and the process by which providers receive payment from the department in order to align the rules with changes in programmatic and department policy related to fee-for-service programs.

The amendment to §61.42 allows providers to collect fees from clients for breast and cervical cancer services performed as authorized by department policy.

#### **COMMENTS**

The department, on behalf of the commission, received no comments concerning the proposed rules during the comment period.

#### **LEGAL CERTIFICATION**

The Department of State Health Services Deputy General Counsel, Linda Wiegman, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

### **SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES**

#### **25 TAC §§61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, 61.42**

#### **STATUTORY AUTHORITY**

The amendments and new sections are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702286

Linda Wiegman

Deputy General Counsel

Department of State Health Services

Effective date: June 27, 2007

Proposal publication date: December 8, 2006

For further information, please call: (512) 458-7111 x6990



## SUBCHAPTER C. BREAST AND CERVICAL CANCER CONTROL PROGRAM

### 25 TAC §§61.34, 61.35, 61.37 - 61.40

#### STATUTORY AUTHORITY

The repeals are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702287

Linda Wiegman

Deputy General Counsel

Department of State Health Services

Effective date: June 27, 2007

Proposal publication date: December 8, 2006

For further information, please call: (512) 458-7111 x6990



## TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

## SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

### 28 TAC §7.69

The Commissioner of Insurance adopts the repeal of §7.69, concerning the 1999 annual statement and 2000 quarterly statements, other reporting forms, and diskettes or electronic filings with the National Association of Insurance Commissioners (NAIC) via the internet. The repeal of the section is adopted without changes to the proposal published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1475).

The repeal of the obsolete section is necessary to permit the simultaneous adoption of a new §7.69 that is also published in this

issue of the *Texas Register*. The new §7.69 adopts by reference the 2006 annual statement blanks and the 2006 quarterly statement blanks, other reporting forms, electronic data filings with the NAIC via the internet and instructions to be used by insurers and certain other entities regulated by the Department when reporting their 2006 calendar year financial condition and business operations and activities.

The repeal eliminates an obsolete section. The reporting forms adopted under the repealed section have been filed and the due dates for filing the 1999 annual statements, 2000 quarterly statements and other reports have passed; therefore, the repealed section is no longer necessary.

The Department did not receive any comments on the proposed repeal.

The repeal is adopted under the Insurance Code §§802.001 - 802.003, 802.051 - 802.056, and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the Commissioner of Insurance to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702359

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: July 1, 2007

Proposal publication date: March 16, 2007

For further information, please call: (512) 463-6327



### 28 TAC §7.69

The Commissioner of Insurance adopts new §7.69, concerning reporting forms and instructions to be used by insurers and certain other entities regulated by the Department when reporting their 2006 calendar year financial condition, business operations, and activities. The new section is adopted with minor technical changes to the proposed text published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1475).

The new section is necessary to adopt the reporting forms and instructions to be used by insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association when reporting their 2006 calendar year financial condition, business operations, and activities. The new section is also necessary to adopt the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings, with the NAIC. The reporting forms include the 2006 annual and quarterly statement blanks, stockholder information supplement, management discussion and analysis, supplemental compensation exhibit, overhead assessment exemption form for insurance company exam-

ination expenses, analysis of surplus, separate accounts, supplemental information for county mutuals and HMOs, release of contributions, reserve summary, inventory of insurance in force, and summary of insurance in force. The information provided by the completion of the forms is necessary to enable the Department to monitor the solvency, business activities, and statutory compliance of the insurers and the other entities regulated by the Department.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; adopts by reference the NAIC 2006 annual and quarterly statement blanks, other reporting forms and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and other entities regulated by the Department to file such annual and quarterly statements and other reporting forms with the Department and/or the NAIC as directed. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the Department. The required documents will provide financial information to the public and regulatory agencies, and will be used by the Department to monitor the financial condition of insurers and other entities regulated by the Department to assure financial solvency and compliance with applicable laws and accounting requirements.

The Department did not receive any comments on the proposal. The Department, however, has made some minor, nonsubstantive changes to the proposed language of the text of the rule as adopted. The changes do not materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice. Proposed subsections (e)(2)(C), (f)(2)(B), (f)(6), (g)(2)(C), (h)(2)(E), (i)(2), (j)(2), and (k)(2) have been revised by adding the word "the" before the word "Insurance," for consistency purposes. Proposed subsection (d)(2)(B) has been revised by adding the word "insurance" before the word "companies," for consistency and clarification purposes. Proposed subsection (f)(2)(B) has been revised by adding the word "overhead" before the word "exemption," for consistency and clarification purposes.

Simultaneously with the adoption of this new section, the Department has adopted the repeal of existing §7.69, which is also published in this edition of the *Texas Register*.

Subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section and other Department regulations and the NAIC instructions specified in the new section. Subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Subsection (m) provides that the Department may request financial reports other than those specified in this section.

The Department did not receive any comments on the proposed new section.

The new section is adopted under the Insurance Code §§802.001 - 802.003 and 802.051 - 802.056, which authorize the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind,

as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business and require certain insurers to make filings with the National Association of Insurance Commissioners; Chapter 2210 (formerly Article 21.49) and Chapter 2201 (formerly Article 21.54) and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.004, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1506.057, 2551.001, and 2551.152, which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the Commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, and 982.302 - 982.306, which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101, which authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the Insurance Code, Title 2, Chapter 844; §421.001 (formerly Article 21.39), which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041, which requires the Department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001, which provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

*§7.69. Requirements for Filing the 2006 Quarterly and 2006 Annual Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.*

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2006 quarterly statements, 2006 annual statement, other reporting forms, and electronic data filings with the department and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2006 quarterly statement blanks, the 2005 annual statement blanks and the related instruc-

tion manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis and Examinations Division, Mail Code 303-1A, P. O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be printed or filed electronically using annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate hard copy annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirement of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital service corporation, and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under the Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under the Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2006 Health Quarterly Statement for the three quarters of 2006 and the 2006 Health Annual Statement if the insurer passes the Health Statement Test as outlined in the "2006 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2006 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change to another type of annual statement. Insurers filing the 2006 Life, Accident and Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2006 Annual Statement Instructions, Life, Accident and Health." Life insurers meeting the test set forth in this subsection to file the 2006 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2006 Annual Statement Instructions, Health." The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007);

(B) 2006 Life, Accident and Health Annual Statement of the Separate Accounts for the 2006 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2007;

(C) 2006 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006. A Texas stipulated premium insurance company, unless specifically

requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2006 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007 if the company qualifies as described in this subsection;

(E) 2006 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006 if the company qualifies as described in this subsection;

(F) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department;

(G) Management's Discussion and Analysis, due on or before April 1, 2007; and

(H) Statement of Actuarial Opinion, due on or before March 1, 2007. The actuarial opinion shall be prepared in accordance with paragraph (5) of this subsection.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2007. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2006 Health Annual Statement and 2006 Quarterly Statements as follows:

(i) 2006 Health Annual Statement with only pages 1 - 6, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2006;

(ii) 2006 Health Quarterly Statements, with only pages 1 - 6, Schedule E, Part 1-Cash, and Part 2-Cash Equivalents to be completed and filed on or before May 15, August 15, and November 15, 2006; and

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(D) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §451.151 effective April 1, 2007); otherwise, this form should not be filed;

(E) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007).

(3) Foreign companies filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007 (stipulated premium insurance companies, April 1, 2007);

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2007;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions.

(5) Statement of Actuarial Opinion required by paragraph (1)(H) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to either the 2006 Life, Accident and Health Annual Statement or the 2006 Health Annual Statement, should follow the applicable provisions of §§3.1601 - 3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601 - 3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2006 Life, Accident and Health Annual Statement or the 2006 Health Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2007.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the

2005 calendar year or had gross written premiums in 2006 in excess of \$5 million, any Mexican casualty insurance company licensed under Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Property and Casualty." The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(B) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(C) 2006 Combined Property/Casualty Annual Statement, due on or before May 1, 2007. This statement is required only for those affiliated insurers that wrote more than \$35 million in direct premiums as a group in calendar year 2006, as disclosed in Schedule T of the Annual Statement(s); and

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(E) The actuarial opinion submitted shall be prepared in accordance with the "2006 Annual Statement Instructions, Property and Casualty."

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and the Stockholder Information Supplement, due on or before March 1, 2007;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(C) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed;

(D) Supplement for County Mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2007;

(E) Texas Supplemental A for county mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2007;

(F) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual companies, due on or before March 1, 2007; and

(G) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers).

(H) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(ii) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006; and

(iii) Management's Discussion and Analysis, due on or before April 1, 2007.

(iv) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(I) The Texas FAIR Plan Association shall complete and file the following:

(i) 2006 Property and Casualty Annual Statement, due on or before March 1, 2007;

(ii) 2006 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(iii) Statement of Actuarial Opinion, due on or before March 1, 2007;

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this title; and

(v) Management's Discussion and Analysis, due on or before April 1, 2007.

(vi) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(3) Foreign property and casualty insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) Electronic combined insurance exhibit, due on or before May 1, 2007;

(E) Combined annual statement electronic filing and PDF filing, due on or before May 1, 2007.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2007.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2006 calendar year and the three quarters for the 2006 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Fraternal." The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2007;

(B) 2006 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2007;

(C) 2006 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. The Supplemental Compensation Exhibit is filed only with the department by domestic insurers.

(2) Domestic insurer paper copy reports and forms to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Texas Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(C) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2007.

(3) Foreign fraternal insurers filing only electronically with the NAIC and not filing a paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2007;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006; and

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2007.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2006 calendar year and the three quarters of the 2006 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Title." The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2006 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2007;

(B) 2006 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2006;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(D) Management's Discussion and Analysis, due on or before April 1, 2007; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2007.

(2) Domestic insurer paper copy filings and reports to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2007;

(C) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(D) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2007.

(3) Foreign companies filing electronically with the NAIC and not filing paper copy with the department shall file a signed paper page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2007;

(B) Quarterly statements electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2007; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2007.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under the Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2007.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to the Insurance Code Chapter 843 shall complete the 2006 Health Annual Statement and the 2006 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement form as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2006 Annual Statement Instructions, Health." The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The Statement of Actuarial Opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC:

(A) 2006 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2007;

(B) 2006 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2006. With each quarterly filing, include a completed copy of Schedule E-part 3-Special Deposits, from the 2006 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2007; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2007. In addition to the requirements set forth in the "2006 Annual Statement Instructions, Health," the department requires that the actuarial opinion include the following:

(i) The Statement of Actuarial Opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year-end for which the opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."



(ii) Under the scope paragraph requirements of section 5 of the "2006 Annual Statement Instructions, Health," relating to the Actuarial Certification, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer paper copy and Texas specific filings and reports to be filed with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2007;

(B) Texas HMO Supplement (Texas Edition), due on or before May 15, August 15, and November 15, 2006, and March 1, 2007;

(C) Electronic filings with the department containing annual statement data, to be completed according to the instructions provided by the department, due on or before March 1, 2007;

(D) Electronic filings with the department containing quarterly statement data, to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2006; and

(E) Texas Overhead Assessment Exemption Form (Texas Edition), due on or before March 1, 2007. This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed.

(3) Electronic filings with the NAIC by domestic and foreign insurers.

(A) Annual statement electronic filing, and PDF filing, due on or before March 1, 2007;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2006;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2007; and

(E) Management Discussion and Analysis, due on or before April 1, 2007.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2006 calendar year with the department only, on or before March 1, 2007:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed; and

(3) Electronic filings with the NAIC by domestic and foreign insurers; and

(4) Statement of Actuarial Opinion, unless exempted under §7.31 (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2006 calendar year with the department only, on or before April 1, 2007:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed;

(3) Release of Contributions Form (Texas Edition);

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3 1/2 %) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 961 shall complete and file the following blanks and forms for the 2006 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2007:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Exemption Form (Texas Edition). This form is to be filed only by domestic insurance companies that have qualified pension contracts under the Insurance Code Article 1.16(b) (revised as §401.151 effective April 1, 2007); otherwise, this form should not be filed.

(l) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a certificate of authority issued under the Insurance Code Chapter 984, shall complete and file the following blanks and forms for the 2006 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in to the extent specified in paragraph (1) of this subsection and in accordance with the "2006 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2007:

(1) 2006 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the Comisión Nacional De Seguros Y Fianzas approving the 2006 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702360

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: July 1, 2007

Proposal publication date: March 16, 2007

For further information, please call: (512) 463-6327



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 6. ICF/MR PROGRAMS-- CONTRACTING**

#### **SUBCHAPTER G. ADDITIONAL FACILITY RESPONSIBILITIES**

##### **40 TAC §6.301, §6.310**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter G, consisting of §6.301 and §6.310, in Chapter 6, ICF/MR (Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions) Programs--Contracting, without changes to the proposal as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1843).

The repeal of §6.301 is adopted to delete an obsolete rule from the DADS rule base. The state law requiring the memorandum of understanding concerning the education of school-age residents of ICFs/MR, which is summarized in subsection (a) and referenced specifically in §6.301(a)(3), was repealed by the 73rd Legislature, 1993, Regular Session. The Texas Education Agency rule referenced in §6.301(a)(3) has also been repealed. The provisions found in subsections (b) and (c) are not necessary to have in rule. The current memorandum of understanding concerning the education of school-age residents of ICFs/MR is referenced in DADS' rule base at 40 TAC §72.5003.

The repeal of §6.310 is adopted to facilitate the consolidation of the state standards for ICF/MR providers relating to surrogate decision-making into one subchapter of the Texas Administrative Code. The requirement in §6.310 for community-based ICF/MR facilities to comply with DADS' surrogate decision-making rules

is now in Chapter 9, Subchapter E, Division 10, adopted elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702290

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734



#### **CHAPTER 8. CLIENT CARE--MENTAL RETARDATION SERVICES**

#### **SUBCHAPTER J. SURROGATE DECISION- MAKING FOR COMMUNITY-BASED ICF/MR AND ICF/MR/RC FACILITIES**

##### **40 TAC §§8.231 - 8.249**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Subchapter J, consisting of §§8.231 - 8.249, in Chapter 8, Client Care--Mental Retardation Services, without changes to the proposal as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1844).

The repeal is adopted to facilitate the consolidation of the state standards for community-based program providers of the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program relating to surrogate decision-making into one subchapter of the Texas Administrative Code. The sections proposed for repeal also needed updating to reflect current practices and terminology. HHSC, on behalf of DADS, is adopting new rules governing surrogate decision-making in Chapter 9, Subchapter E, Division 10, elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, includ-

ing DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702291

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734



## CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

### SUBCHAPTER E. ICF/MR PROGRAMS-- CONTRACTING

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §9.203, new §§9.281 - 9.295, and the repeal of §9.299 and §9.300 in Chapter 9, Subchapter E, ICF/MR Programs--Contracting. New §9.285 and §9.294 are adopted with changes to the proposed text published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1846). The amendment to §9.203; new §§9.281 - 9.284, 9.286 - 9.293, and 9.295; and the repeal of §9.299 and §9.300 are adopted without changes to the proposed text.

The amendment and new sections are adopted to place rules governing surrogate decision-making into Chapter 9, Subchapter E, with other rules governing providers in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program. The repeals of current surrogate decision-making rules in Chapter 6, Subchapter G, and in Chapter 8, Subchapter J, are adopted elsewhere in this issue of the *Texas Register*.

The amendment is adopted to add definitions of words and terms used in the new sections and reorders some of the definitions to place them in alphabetical order. The new sections are adopted to provide the state standards for community program providers with regard to surrogate decision-making, in accordance with Texas Health and Safety Code, Chapter 597.

The repeal of §9.299 and §9.300 is adopted to make Subchapter E more consistent with the majority of DADS rules, which do not include references to regulations and statutes or information about distributing copies of the completed rules.

DADS received written comments from the Coalition for Nurses in Advanced Practice (CNAP). A summary of the comments and the responses follow.

Comment: Concerning §9.203(42)(D) and (43)(D), the commenter stated that the language in these definitions, which indicates that the person is undergoing a major dental or medical treatment "in the opinion of the individual's physician," is inappropriately limiting and should acknowledge the opinion of the individual's advanced practice nurse and/or dentist.

Response: The agency declines to change the definition in §9.203(42)(D) or (43)(D) to reference an advanced practice nurse or dentist. The definitions are consistent with the definitions in Health and Safety Code, §597.001, which apply to surrogate decision-making.

Comment: Concerning §9.285(a)(1), which references the "prescribing physician," the commenter stated that, in some communities, psychoactive drugs are most frequently prescribed by psychiatric-mental health (PMH) nurse practitioners, PMH clinical nurse specialists, or other advanced nurse practitioners and clinical nurse specialists due to the lack of a psychiatrist. The commenter suggests changing "prescribing physician" to "prescribing practitioner" in the last line of §9.285(a)(1).

Response: The agency agrees that a psychoactive drug may be prescribed by someone other than a physician and, therefore, has substituted "physician" with "health care professional," a term also used in §9.290(a)(2)(A).

In addition, the agency changed §9.294(a) to delete the phrase "not more than" in reference to the number of days the chairperson of a surrogate consent committee must suspend a committee proceeding if the committee is informed that an application for a guardianship proceeding for an individual has been filed. This change will make §9.294(a) consistent with a related provision at §9.293(g).

## DIVISION 1. GENERAL REQUIREMENTS

### 40 TAC §9.203

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702292

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734



## DIVISION 10. SURROGATE DECISION- MAKING

### 40 TAC §§9.281 - 9.295

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§9.285. *IDT Decisions.*

(a) An IDT may:

(1) consent to the following changes regarding administration of a psychoactive medication subsequent to the initial consent for the medication given by a surrogate consent committee, if such changes pose no significant risk to an individual based on the judgment of the prescribing health care professional and other health care professionals involved in the individual's care:

(A) an increase or decrease in the dosage of the medication; and

(B) a change of medication within the same therapeutic drug class; and

(2) make a decision that involves risk to the individual protection and rights not specifically reserved to a surrogate decision-maker or a surrogate consent committee.

(b) An IDT's consent to a change regarding the administration of a psychoactive medication, as described in subsection (a)(1) of this section, is only valid until the expiration of the initial consent by the surrogate consent committee.

(c) The IDT must document, in the individual's record, a decision made in accordance with subsection (a) of this section, including the deliberations of the IDT in reaching the decision.

§9.294. *Notice of Guardianship Proceeding.*

(a) If before a surrogate consent committee makes a treatment decision, the committee is informed that an application for a guardianship proceeding for an individual has been filed with a court, the chairperson of the committee must suspend the committee proceeding for five days unless a medical necessity exists that requires a treatment decision to be made during the five-day period.

(b) If the chairperson suspends a committee proceeding and a person has not been appointed guardian for the individual within five days after the suspension, the chairperson must resume the committee proceeding.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702293

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734



## DIVISION 11. REFERENCES AND DISTRIBUTION

### 40 TAC §9.299, §9.300

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2007.

TRD-200702294

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734



## CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

### SUBCHAPTER AA. VENDOR PAYMENT

#### 40 TAC §19.2613

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §19.2613, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1856).

The new section is adopted to allow a nursing facility to procure an augmentative communication device system (ACD) for a Medicaid-eligible individual residing in a Medicaid-certified facility or a Medicaid-certified distinct part of a facility whose daily vendor rate is paid by Medicaid. The nursing facility must provide the ACD if the need for the ACD is identified and the nursing facility can receive reimbursement through a DADS voucher

system. These devices have previously only been available for a Medicaid-eligible nursing facility recipient with personal funds or as an incurred medical expense.

DADS received no comments regarding adoption of the new section.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal

funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2007.

TRD-200702341

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: July 1, 2007

Proposal publication date: March 30, 2007

For further information, please call: (512) 438-3734

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# REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Agency Rule Review Plan

Texas State Board of Public Accountancy

### Title 22, Part 22

TRD-200702354

Filed: June 8, 2007



## Proposed Rule Reviews

Commission on State Emergency Communications

### Title 1, Part 12

The Commission on State Emergency Communications (CSEC) files this notice of intent to review Chapter 253, concerning Practice and Procedure. This review is conducted in accordance with Texas Government Code, §2001.039.

CSEC has conducted a preliminary review of Chapter 253, which consists only of §253.1, concerning Petitions for Rulemaking before the Commission, and has determined that the reasons for initially adopting the rule continue to exist. As part of the chapter review, CSEC is considering whether rules applicable to contested cases should be proposed and adopted.

All comments or questions regarding this notice of intent to review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. The current text of §253.1 can be found on CSEC's website at [http://www.911.state.tx.us/browse.php/rules\\_legislation](http://www.911.state.tx.us/browse.php/rules_legislation).

§253.1. Petitions for Rulemaking before the Commission.

TRD-200702345

Paul Mallett

Executive Director

Commission on State Emergency Communications

Filed: June 8, 2007



Texas State Board of Public Accountancy

### Title 22, Part 22

The Texas State Board of Public Accountancy will review and consider for readoption, revision or repeal Title 22 Texas Administrative Code, Part 22, Chapters 501, 505, 507, 509, 511, 512, 513, 515, 517, 518, 519, 521, 523, 525, 526 and 527.

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

This review is conducted pursuant to §2001.039 of the Government Code.

In conducting its review the Board will determine whether the reasons for the rule continue to exist. The rule review will also determine whether the rule is obsolete, whether the rule reflects current legal and policy considerations and whether the rule reflects current procedures of the Board.

Any comments pertaining to this notice of intention may be submitted within the next 120 days to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Any proposed changes to the rules as a result of this review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

Chapter 501. Rules of Professional Conduct

Chapter 505. The Board

Chapter 507. Employees of the Board

Chapter 509. Rulemaking Procedures

Chapter 511. Certification as a CPA

Chapter 512. Certification by Reciprocity

Chapter 513. Registration

Chapter 515. Licenses

Chapter 517. Temporary Practice in Texas

Chapter 518. Unauthorized Practice of Public Accountancy

Chapter 519. Practice and Procedure

Chapter 521. Fee Schedule

Chapter 523. Continuing Professional Education

Chapter 525. Criminal Background Investigations

Chapter 526. Board Opinions

Chapter 527. Peer Review

TRD-200702355

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Filed: June 8, 2007



## Adopted Rule Reviews

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

**Title 4, Part 3**

In accordance with the Texas Government Code §2001.039 regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) adopts the review of Title 4, Part 3, Chapter 61, Commercial Feed Rules as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1587).

The TFFCS/OTSC finds that the reasons for adopting Title 4, Part 3, Chapter 61, Commercial Feed Rules, continue to exist and readopts the rules without change. The TFFCS/OTSC does plan to propose amendments to the rules at a later date.

No public comments were received regarding the rule review of the Commercial Feed Rules.

TRD-200702356

Dr. Timothy J. Herrman

State Chemist & Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: June 11, 2007



In accordance with the Texas Government Code, §2001.039, regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, the Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) adopts its review of Title 4, Part 3, Chapter 63, Commercial Pet Food Rules, as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1587).

The TFFCS/OTSC finds that the reasons for adopting Title 4, Part 3, Chapter 63, Commercial Pet Food Rules, continue to exist and read-

opts the rules without change. The TFFCS/OTSC does plan to propose amendments to the rules at a later date.

No public comments were received regarding the rule review of the Commercial Pet Food Rules.

TRD-200702357

Dr. Timothy J. Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Services/Office of the Texas State Chemist

Filed: June 11, 2007



In accordance with the Texas Government Code, §2001.039, regarding Agency Review of Existing Rules and requiring state agencies and other governmental bodies to review their rules every four years, the Texas Feed and Fertilizer Control Service (TFFCS)/Office of the Texas State Chemist (OTSC) adopts the review of Title 4, Part 3, Chapter 65, Commercial Fertilizer Rules, as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1587).

The TFFCS/OTSC finds that the reasons for adopting Title 4, Part 3, Chapter 65, Commercial Fertilizer Rules, continue to exist and readopts the rules without change. The TFFCS/OTSC will propose amendments to the rules at a later date.

No public comments were received regarding the rule review of the Commercial Fertilizer Rules.

TRD-200702358

Dr. Timothy J. Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Filed: June 11, 2007



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §75.7(a)

**Board of Chiropractic Examiners  
Schedule of Fees**

	<b>Fee Description</b>	<b>Board Fee</b>	<b>Professional Fee (78<sup>th</sup> Leg)</b>	<b>Texas Online</b>	<b>Patient Protection</b>	<b>Total Fee</b>
1.	DC Initial Application (includes \$50 transcript verification)	\$185.00	\$200.00	\$0.00	\$0.00	\$385.00
2.	DC Jurisprudence Examination (Repeat Exam)	135.00	200.00	0.00	0.00	335.00
3.	DC Initial License - Prorated	125.00	0.00	0.00	5.00	130.00
4.	DC License Renewal - On Time	135.00	200.00	5.00	1.00	341.00
5.	DC License Renewal - Late under 90 days	202.50	200.00	5.00	1.00	408.50
6.	DC License Renewal - Late 90 days to 1 year	270.00	200.00	5.00	1.00	476.00
7.	DC License Renewal - Late up to 3 Years for Good Cause	Calculated	Calculated	0.00	0.00	Calculated
8.	DC License Reinstatement - Out of State	135.00	200.00	0.00	0.00	335.00
9.	DC License - Put on Inactive Status	None	None	None	None	None
10.	DC License - Reactivate from Inactive Status	135.00	200.00	0.00	0.00	335.00
11.	DC License - Duplicate Copy (Replacement)	25.00	0.00	0.00	0.00	25.00
12.	DC Annual Certificate - Duplicate Copy (Replacement)	10.00	0.00	0.00	0.00	10.00
13.	Facility License - Initial Registration	65.00	0.00	0.00	5.00	70.00
14.	Facility License Renewal - On Time	65.00	0.00	2.00	1.00	68.00
15.	Facility License Renewal - Late under 90 days	115.00	0.00	2.00	1.00	118.00
16.	Facility License Renewal - Late 90 days to one year	165.00	0.00	2.00	1.00	168.00
17.	Facility License - Duplicate Copy (Replacement)	25.00	0.00	0.00	0.00	25.00
18.	Radiologic Technician Initial Registration	35.00	0.00	0.00	0.00	35.00
19.	Radiologic Technician Annual Renewal	35.00	0.00	0.00	1.00	36.00
20.	Continuing Education Course Approval Fee (annual)	25.00	0.00	0.00	0.00	25.00
21.	TBCE Online Jurisprudence CE Course	55.00	0.00	0.00	0.00	55.00
22.	Certification of DC license (to another state board)	25.00	0.00	0.00	0.00	25.00
23.	Verification of DC license (not certification letter) + postage	2.00	0.00	0.00	0.00	2.00
24.	Verification of Educational Courses/Grades	50.00	0.00	0.00	0.00	50.00
25.	Printed copy of Statutes and Rules	10.00	0.00	0.00	0.00	10.00
26.	Returned Check Fee	25.00	0.00	0.00	0.00	25.00

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 1, 2007, through June 7, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 13, 2007. The public comment period for this project will close at 5:00 p.m. on July 13, 2007.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Robert Stoeckmann;** Location: The projects are located on the Matagorda Bay shoreline near the intersection of South Ocean Drive and Stoeckmann Drive, and on Powder Horn Lake on the north side of Stoeckmann Drive, approximately 0.15 mile west of its intersection with Ocean Drive South, in Indianola, Calhoun County, Texas. The project sites can be located on the U.S.G.S. quadrangle map entitled: Keller Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters), respectively, are: Zone 14, Easting - 745000, Northing - 3156500; and Zone 14, Easting - 745714, Northing - 3156625. Project Description: The applicant proposes to retain a total of 0.52 acre of fill placed without a permit. The unauthorized fill consists of 0.08 acre of soil placed in non-tidal wetlands adjacent to Powder Horn Lake and 0.44 acre of riprap material placed on eroding shoreline of Matagorda Bay (0.04 subject to seasonal tide, 0.4 subject to daily tide). As mitigation for these fills, the applicant proposes to enhance nearby wetlands adjacent to Powder Horn Lake by removing 5,507 square feet of salt cedar trees and excavating 7,588 square feet of old road bed down to surrounding wetland elevations. Trees would be removed to an upland area and burned and excavated material (approximately 1,000 cubic yards) would be placed into an upland disposal area as shown in the plans. The area would be inspected for 3 years to verify success for the salt cedar removal. CCC Project No.: 07-0193-F1; Type of Application: U.S.A.C.E. permit application #24494 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: The Preserve at Mustang Island;** Location: The project is located on the north side of Zahn Road, at the intersection of Zahn Road and State Highway 361, approximately 0.3 mile north of Packery Channel Bridge, in Corpus Christ, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane

Islands SW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 677000; Northing: 3056300. Project Description: The applicant proposes to construct a single-family residential and multi-family condominium neighborhood to include amenities and retail shops within an approximate 137-acre tract of land. There would be six storm-water outfalls constructed to facilitate the dissipation and conveyance of storm-water from the neighborhood. This includes three storm sewer outfalls constructed in association with the storm-water grassy swales. Approximately 52% of the development run-off would be diverted through the swales. These swales would help filter, detain, and percolate storm-water. The outfalls would have diffuser blocks and a rock apron that would further slow down storm-water runoff and aid percolation of water into the surrounding area. Approximately 4.33 acres of upper marsh wetlands with fresh and brackish water wetlands would be filled by the proposed work. Fill for some home and condo sites would be placed in 3.45 acres of wetlands, with 0.35 acre of wetlands to be filled for some streets. A portion of the proposed grassy swales and a portion of two of the storm sewer outfalls would require the placement of fill into 0.53 acre of wetlands. No tidal wetlands, sand flats or algal flats would be filled for the proposed project. The construction of the project would be completed by mechanical means utilizing predominantly on-site materials to grade the site to appropriate elevations for flood, drainage, and erosion control. Site grading would also be done to complete dune mitigation. If needed, off-site fill material of similar size, shape and consistency would also be used. Silt fencing would be used around the construction and wetland areas, and mulch and hay bales would be placed in graded areas for control of rainfall run-off to prevent erosion and control wind-blown sand. As compensation for the proposed impacts, the applicant proposes to scrape-down 1.68 acres of on-site uplands to a suitable elevation for wetland plants to revegetate the area. Some post-construction monitoring would be done to ensure that proper elevations are reached and that natural revegetation is occurring. In addition, the applicant proposes to preserve 63.58 acres of on-site wetlands with either a conservation easement and/or deed restrictions. An additional 5.43 acres of tidal waters and lagoons tidally connected to Corpus Christi Bay, and interspersed within the on-site wetlands to be preserved, would not be impacted by the proposed project. CCC Project No.: 07-0200-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-690 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200702374

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: June 12, 2007

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/18/07 - 06/24/07 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/18/07 - 06/24/07 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200702369

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 12, 2007

## Court of Criminal Appeals

### Availability of Grant Funds

The Court of Criminal Appeals announces the availability of funds to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects for: prosecutors, prosecutor office personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, clerks, judges, and other court personnel of the appellate courts, district courts, county courts at law, county courts, justice courts and municipal courts of this State, or other persons as provided by statute. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Bill (House Bill 1) 80th Legislature, Regular Session. The grant period is September 1, 2007 through August 31, 2008. The deadline for applications is July 20, 2007.

Applicants may request an application packet by phone, mail, or in person. The phone number is (512) 475-2312, and the address is: Court of Criminal Appeals, Judicial Education Program, 201 West 14th Street, Austin, Texas 78701.

The Court of Criminal Appeals also announces the availability of \$150,000 in funding to be provided in the form of grants to entities for the purpose of providing continuing legal education courses, programs, and technical assistance projects on actual innocence for: criminal defense attorneys, prosecuting attorneys, judges, law enforcement officers, law students, bailiffs, constables, warrant officers, or other persons as provided by statute. Funds are subject to the provisions of Chapter 56 of the Texas Government Code and the General Appropriations Bill (House Bill 1) 80th Legislature, Regular Session, Article IV, page IV-6, rider 8. The grant period is September 1, 2007 through August 31, 2008. The deadline for applications is July 20, 2007.

Applicants may request an application packet by phone, mail, or in person. The phone number is (512) 475-2312, and the address is: Court of Criminal Appeals, Judicial Education Program, 201 West 14th Street, Austin, Texas 78701.

TRD-200702413

Louise Pearson

Clerk of the Court

Court of Criminal Appeals

Filed: June 13, 2007

## Texas Education Agency

### Notice of Correction: Request for Applications Concerning the Career and Technical Education State Leadership Projects

The Texas Education Agency (TEA) published Request for Application (RFA) #701-07-108 concerning the Career and Technical Education State Leadership Projects in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1926).

The TEA is amending the dates of the project. Applicants should plan for a starting date of no earlier than September 1, 2007, and an ending date of no later than August 31, 2008. This correction reflects a change from the original starting date of July 1, 2007, and the original ending date of July 31, 2008.

The TEA is also amending the deadline for receipt of applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, August 2, 2007, to be considered for funding. This correction reflects a change from the original deadline date of Thursday, May 10, 2007.

Further Information. For clarifying information about the RFA, contact Kathy Mihalik, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200702410

CRISTINA DE LA FUENTE-VALADEZ

Director, Policy Coordination

Texas Education Agency

Filed: June 13, 2007

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Church Hill Water Supply Corporation; DOCKET NUMBER: 2007-0151-PWS-E; IDENTIFIER: RN101205136; LOCATION: Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.45(b)(1)(C)(i) and Texas Health & Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.43(c)(8), by failing to maintain the storage tanks in accordance with American Water Works Association standards; and 30 TAC §290.46(m), by failing to maintain the housing for the gas chlorination equipment in good working condition; PENALTY: \$1,207; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: City of Cranfills Gap; DOCKET NUMBER: 2005-1134-MWD-E; IDENTIFIER: RN101916492; LOCATION: Cranfills Gap, Bosque County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollution Discharge Elimination System (TPDES) Permit Number WQ0014169001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to meet total suspended solids (TSS) and total chlorine residual effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0014169001, Sludge Provisions, by failing to submit the annual sludge report; 30 TAC §305.125(1) and TPDES Permit Number WQ0014169001, Operational Requirements, Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §317.4(a)(8) and §317.7(i), by failing to have a backflow prevention device tested annually; 30 TAC §319.11(c) and TPDES Permit Number WQ0014169001, Monitoring and Reporting Requirements, Number 5, by failing to install a measuring device that is capable of accurately measuring the actual flow range; 30 TAC §305.125(1), TPDES Permit Number WQ0014169001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; 30 TAC §305.125(9)(A) and TPDES Permit Number WQ0014169001, Monitoring and Reporting Requirements Number 7(a), by failing to orally notify the TCEQ of an unauthorized discharge; and 30 TAC §312.141(a) and TPDES Permit Number WQ0014169001, Sludge Provisions, Section I.A., by failing to ensure that the transporter of sludge from the waste water treatment facility had authorization from the TCEQ to handle and dispose of sewage sludge; PENALTY: \$15,200; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Explorer Pipeline Company; DOCKET NUMBER: 2007-0503-AIR-E; IDENTIFIER: RN101954394; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petro-

leum storage and distribution plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(A) and (a)(1)(B) and (c), §122.143(4), Federal Operating Permit (FOP) O-2780, General Terms and Conditions, Special Condition 2(F), and THSC, §382.085(b), by failing to determine if the emissions event was reportable, timely reporting an emissions event, and submitting a final report; and 30 TAC §§101.20(1), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Number 36100, Special Condition 1, FOP O-2780, General Terms and Conditions, Special Conditions 1A and 12A, 40 Code of Federal Regulations (CFR) §60.112b(a)(2)(i)(B)(iii), and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits and to properly operate a floating roof storage tank; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2007-0297-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Air Permit Numbers 8803A and PSD-TX-413M8, Special Condition ("SC") 1, and THSC, §382.085(b), by failing to prevent an unauthorized emissions event; PENALTY: \$12,150; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: City of Lefors; DOCKET NUMBER: 2007-0659-MWD-E; IDENTIFIER: RN102184546; LOCATION: Lefors, Gray County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10411001, Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$2,280; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: City of Mertens; DOCKET NUMBER: 2007-0331-MWD-E; IDENTIFIER: RN101407815; LOCATION: Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13271001, Effluent Limitations and Monitoring Requirement Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number 13271001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$5,100; Supplemental Environmental Project (SEP) offset amount of \$4,080 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Parker-Hannifin Corporation; DOCKET NUMBER: 2007-0232-AIR-E; IDENTIFIER: RN102914033; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fluoroplastic tubing manufacturer; RULE VIOLATED: 30 TAC §116.115(c), Air NSR Permit Number 46721, Special Conditions Number 8D, and THSC, §382.085(b), by failing to maintain or have readily available the monthly reports of average daily and rolling 12-month emissions for the catalytic oxidizer; 30 TAC §116.115(c), Air NSR Permit Number 4671, Special Condition Number 7B, and THSC, §382.085(b), by failing to maintain the temperature monitor in good working order; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization for a source of emissions; PENALTY: \$3,672; ENFORCEMENT COORDINATOR: Cheryl Thompson,

(817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: SNSSS Enterprises, Inc. dba Blalock Food Mart; DOCKET NUMBER: 2006-2024-PST-E; IDENTIFIER: RN101466712; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; and 30 TAC §339.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; PENALTY: \$10,625; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Texas H<sub>2</sub>O, Inc.; DOCKET NUMBER: 2007-0323-MWD-E; IDENTIFIER: RN101702397; LOCATION: Hood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013786001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013786001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: \$6,929; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Velta Homes, Inc.; DOCKET NUMBER: 2007-0246-WQ-E; IDENTIFIER: RN105150916; LOCATION: Ovilla, Ellis County, Texas; TYPE OF FACILITY: construction site for a single family housing development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and 30 TAC §205.6 and the Code, §5.702, by failing to pay general permit storm water fees; PENALTY: \$2,000; Supplemental Environmental Project (SEP) offset amount of \$800 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200702375

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 12, 2007



## Notice of District Hearing

Notices issued June 7, 2007.

TCEQ Docket No. 2007-0498-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Fort Bend County Municipal Utility District No. 101 (District). The Application was filed with the TCEQ and included a petition from Union Pacific Railroad Company, which

is an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code (TWC), Title 30, Chapter 293 of the Texas Administrative Code (TAC) and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 22, 2007, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by the Texas Water Commission, predecessor to the Texas Commission on Environmental Quality, on March 9, 1988 and organized under the terms and provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. The District contains 426.6 acres of land within Fort Bend County Texas. Pursuant to 30 TAC §293.131, the petition filed with the Application states that dissolution is desirable and necessary because the District is not required for the development of land within its boundaries.

TCEQ Docket No. 2007-0499-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Fort Bend County Municipal Utility District No. 102 (District). The Application was filed with the TCEQ and included a petition from Union Pacific Railroad Company, which is an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code (TWC), Title 30, Chapter 293 of the Texas Administrative Code (TAC) and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 22, 2007, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by the Texas Water Commission, predecessor to the Texas Commission on Environmental Quality, on March 9, 1988 and organized under the terms and provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. The District contains 453.1 acres of land within Fort Bend County Texas. Pursuant to 30 TAC §293.131, the petition filed with the Application states that dissolution is desirable and necessary because the District is not required for the development of land within its boundaries.

TCEQ Docket No. 2007-0500-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Fort Bend County Municipal Utility District No. 103 (District). The Application was filed with the TCEQ and included a petition from Union Pacific Railroad Company, which is an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code (TWC), Title 30, Chapter 293 of the Texas Administrative Code (TAC) and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 22, 2007, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by the Texas Water Commission, predecessor to the Texas Commission on Environmental Quality, on March 9, 1988 and organized under the terms and provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. The District contains 405.9 acres of land within Fort Bend County Texas. Pursuant to 30 TAC §293.131, the petition filed with the Application states that dissolution is desirable and necessary because the District is not required for the development of land within its boundaries.

TCEQ Docket No. 2007-0501-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Fort Bend County Municipal Utility District No. 104 (District). The Application was filed with the TCEQ and included a petition from Union Pacific Railroad Company, which is an owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code (TWC), Title 30, Chapter 293 of the Texas Administrative Code (TAC) and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, August 22, 2007, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The Dis-

trict was created by the Texas Water Commission, predecessor to the Texas Commission on Environmental Quality, on March 9, 1988 and organized under the terms and provisions of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 54, Texas Water Code. The District contains 340.8 acres of land within Fort Bend County Texas. Pursuant to 30 TAC §293.131 the petition filed with the Application states that dissolution is desirable and necessary because the District is not required for the development of land within its boundaries.

**INFORMATION SECTION.** The petitions filed with the four above applications state that the Districts: (1) have not performed any of the functions for which they were created for five consecutive years preceding the date of the applications, (2) are financially dormant, and (3) have no outstanding bonded indebtedness. Affidavits from the State Comptroller of Public Accounts were included in the applications certifying that these Districts have no bonded indebtedness.

Pursuant to TWC §49.327, if a request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code.

The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the Application. At the hearing, pursuant to TWC §49.324, the TCEQ will determine if the District should be dissolved.

For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al (512) 239-0200. Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD) at least one week prior to the hearing.

TRD-200702409

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 13, 2007



#### Notice of Intent to Perform Removal Action at the Cass County Treating Company State Superfund Site, Linden, Cass County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the Cass County Treating Company state Superfund site (the site). The site is comprised of approximately 17 acres located at 304 Hall Road in Linden, Cass County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Wood treating operations were conducted at the site from the 1960(s) to 2004. The contaminants of concern at the site include cadmium, chromium, creosote constituents, dieldrin, endrin, lead, mercury, naphthalene, and pentachlorophenol (PCP). One or more of these

contaminants have been found in soil, sediments, and groundwater at the site.

The site is proposed for listing under THSC, Chapter 361, Subchapter F. The immediate action is appropriate to remove a source of contamination to surface water and groundwater and to protect human health and the environment. A removal can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site. The remedial objectives of the site can be furthered through a technically uncomplicated removal action. The removal action will consist of the removal and disposal of chemical storage tanks and their contents, waste drums and their contents, sumps, contaminated concrete, and dilapidated structures that would impede future investigations and present physical hazards to site workers.

A portion of the records for this site is available for review during regular business hours at the Atlanta Public Library, 101 West Hiram, Atlanta, Texas 75551 (telephone: (903) 796-2112). Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact Omar Valdez, TCEQ Project Manager, Remediation Division, at 1-800-633-9363, extension 6858, or Bruce McAnally, TCEQ Community Relations Coordinator, at 1-800-633-9363, extension 2141.

TRD-200702372

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 12, 2007



#### Notice of Intent to Perform Removal Action at the Tenaha Wood Treating State Superfund Site, Shelby County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the Tenaha Wood Treating state Superfund site (the site). The site is comprised of approximately six acres and is located south of the city limits of Tenaha, at 275 County Road 4382 in Shelby County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Wood treating operations were conducted at the site from approximately 1970 to 1985. The contaminants of concern in soil and sediments at the site include arsenic, chromium, copper, dioxins, and pentachlorophenol (PCP).

The site is proposed for listing under THSC, Chapter 361, Subchapter F. The immediate action is appropriate to remove contaminated soil that is an ongoing source of contamination to surface water, and is appropriate to protect human health and the environment. A removal can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site. The remedial objectives of the site can be furthered through a technically uncomplicated removal action. The removal will consist of the excavation and disposal of contaminated soils from the former process areas and areas of known contamination.

A portion of the records for this site is available for review during regular business hours at the Fannie Brown Booth Memorial Library, 619 Tenaha Street, Center, Texas 75935, telephone (936) 598-5522.

The complete public file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available for persons with disabilities on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact Omar Valdez, TCEQ Project Manager, Remediation Division, at 1-800-633-9363, extension 6858, or Crystal Taylor, Community Relations Coordinator, at 1-800-633-9363, extension 3844.

TRD-200702373

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 12, 2007



### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Blacksher Development Corporation; DOCKET NUMBER: 2006-0517-MWD-E; TCEQ ID NUMBER: RN101263101; LOCATION: 3900 feet northwest of the intersection

of Highway 62 and Highway 87, Orange, Orange County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(5); Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13691001, Operation Requirements No. 1; and Texas Water Code (TWC), §26.121(a), by failing to ensure that all systems of collection, treatment, and disposal were properly operated and maintained; 30 TAC §305.125(5); §317.3(b)(1), (b)(3), and (e)(5); TPDES Permit No. 13691001, Operation Requirements No. 1, by failing to ensure that all systems of collection, treatment, and disposal were properly operated and maintained; 30 TAC §305.125(5) and §317.4(g)(4)(B)(iii); and TPDES Permit No. 13691001, Operation Requirements No. 1, by failing to ensure that all systems of collection, treatment, and disposal were properly operated and maintained; 30 TAC §305.125(1) and TPDES Permit No. 13691001, Monitoring and Reporting Requirements No. 7(c), by failing to submit noncompliance notifications to the TCEQ for effluent violations which deviated from the permitted effluent limitations by more than forty percent; 30 TAC §305.125(5) and TPDES Permit No. 13691001, Operation Requirements No. 1, by failing to ensure that all systems of collection, treatment, and disposal were properly operated and maintained; 30 TAC §305.125(11)(B) and TPDES Permit No. 13691001, Sludge Provisions Section III No. G., by failing to timely submit the annual sludge report to the TCEQ by September 1st of each year; 30 TAC §305.125(5) and §317.7(e); and TPDES Permit No. 13691001, Operation Requirements No. 1, by failing to properly secure the wastewater treatment plant; 30 TAC §319.7(d); TPDES Permit No. 13691001, Monitoring and Reporting Requirements No. 1; and TWC, §26.121(a), by failing to timely submit discharge monitoring reports by the 20th day of the following month; 30 TAC §319.11(c) and TPDES Permit No. 13691001, Monitoring and Reporting Requirements No. 2, by failing to properly analyze effluent samples for total chlorine residual; 30 TAC §305.125(1); TPDES Permit No. 13691001, Effluent Limitations and Monitoring Requirements No. 1; and TWC, §26.121(a), by failing to comply with its permitted effluent limits; and 30 TAC §305.125(9)(A) and TPDES Permit No. 13691001, Monitoring and Reporting Requirements No. 7(a), by failing to submit noncompliance notification to the TCEQ for an unauthorized discharge from the Greenwig lift station that occurred on February 11, 2006; PENALTY: \$29,577; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Dan Park dba U.S.A. Dry Cleaners; DOCKET NUMBER: 2006-1320-DCL-E; TCEQ ID NUMBER: RN104408943; LOCATION: 11819 Preston Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e), and Texas Health and Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning drop station facility; 30 TAC §337.14(c), and TWC, §5.702, by failing to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24002784 for Fiscal Year 2006; PENALTY: \$1,185; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Grayson Flying Service, Inc. dba Voyager Air Center; DOCKET NUMBER: 2005-0270-PST-E; TCEQ ID NUMBER: RN101563856; LOCATION: 5318 Airport Drive, Denison, Grayson County, Texas; TYPE OF FACILITY: flight and instruction service; RULES VIOLATED: 30 TAC §334.74, by failing to investigate and remediate a release from aboveground storage tanks at the facility; and 30 TAC §334.129(a), by failing to submit a required initial report or correspondence discussing remediation of fuel released at the facil-

ity; PENALTY: \$22,500; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Pinglia and Associates Investment, L.L.C. dba Happy Food Mart; DOCKET NUMBER: 2005-1295-PST-E; TCEQ ID NUMBER: RN101867547; LOCATION: 3602 South Shaver Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily harm and property damage caused by accidental releases arising from the operation of underground storage tanks for the period December 3, 2002 - December 3, 2003; PENALTY: \$2,100; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Vance E. Gifford dba Giffords Cleaners; DOCKET NUMBER: 2006-1049-DCL-E; TCEQ ID NUMBERS: RN103955860 and RN103955811; LOCATION: 4848 Rittiman Road (drop station facility), and 1870 South W.W. White Road, San Antonio, Bexar County, Texas (dry cleaning facility); TYPE OF FACILITY: dry cleaning facility and drop station facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the drop station facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the dry cleaning facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c) and TWC, §5.702, by failing to pay outstanding dry cleaner fees for TCEQ Financial Account No. 24000551 for Fiscal Years 2004-2005; PENALTY: \$2,370; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200702371

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 12, 2007



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required

to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 23, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Ahad Business, Inc. dba My Favorite Cleaners; DOCKET NUMBER: 2006-1337-DCL-E; TCEQ ID NUMBER: RN104996152; LOCATION: 1115A Dulles Avenue, Stafford, Fort Bend County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a), and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and 30 TAC §337.14(c), and Texas Water Code (TWC), §5.702, by failing to pay dry cleaner registration fees for TCEQ Financial Administration Account No. 24004086 for Fiscal Years 2005 - 2006; PENALTY: \$1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2005-1906-AIR-E; TCEQ ID NUMBER: RN102450756; LOCATION: 1795 Burt Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and THSC, §382.085(b), by allowing the unauthorized emission of air contaminants; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$5,00 applied to Southeast Texas Regional Air Monitoring Network; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: General Dynamics OTS (Garland), L.P.; DOCKET NUMBER: 2005-1672-AIR-E; TCEQ ID NUMBER: RN102660909; LOCATION: 1200 North Glenbrook Drive, Garland, Dallas County, Texas; TYPE OF FACILITY: ordnance production facility; RULES VIOLATED: 30 TAC §116.115(b)(2)(F), and THSC, §382.085(b), by failing to comply with permitted Maximum Allowable Emissions Rates for the plafORIZATION system at emission point number 7-PLAF-PRE-TREAT for volatile organic compounds, in violation of New Source Review (NSR) Permit No. 51412, General Condition No. 8; 30 TAC §116.115(b)(2)(E) and (c), and THSC, §382.085(b), by failing to maintain records and data to demonstrate compliance with the permit in a readily available format for TCEQ staff, in violation of NSR Permit No. 51412 General Condition No. 7 and Special Condition Nos. 11B., C. and D.; 30 TAC §106.433(8)(B), (C), (D), and THSC, §382.085(b), by failing to maintain and make permit by rule (PBR) records for a surface coating facility immediately available to TCEQ staff; and 30 TAC §106.8(c) and THSC, §382.085(b), by failing to maintain records containing sufficient information to demonstrate compliance with PBR requirements; PENALTY: \$86,775; SEP offset amount of \$43,387 applied to City of Fort Worth Mow Down Air Pollution Mower Exchange; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional



Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Houston Refining, L.P.; DOCKET NUMBER: 2006-1948-AIR-E; TCEQ ID NUMBER: RN100218130; LOCATION: 12000 Lawndale Street, Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §116.715(a); Flexible Air Permit No. 2167/Prevention of Significant Deterioration (PSD)-Texas (TX)-985, Special Condition No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions. Since the emission event was avoidable and excessive, Houston Refining failed to meet the demonstrations for an affirmative defense in 30 TAC §101.222; 30 TAC §116.715(a); Flexible Air Permit No. 2167/PSD-TX-985, Special Condition No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions. Since the emission event was avoidable and excessive, Houston Refining failed to meet the demonstrations for an affirmative defense in 30 TAC §101.222; 30 TAC §101.20(3), and §116.715(a); Flexible Air Permit No. 2167/PSD-TX-985, Special Condition No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event was avoidable, Houston Refining failed to meet the demonstrations for an affirmative defense in 30 TAC §101.222; 30 TAC §101.20(3), and §116.715(a); Flexible Air Permit No. 2167/PSD-TX-985, Special Condition No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions. Since the emissions event was avoidable, Houston Refining failed to meet the demonstrations for an affirmative defense under 30 TAC §101.222; PENALTY: \$49,800; SEP offset amount of \$24,900 applied to Houston-Galveston Area Emission Reduction Credit Organization; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Hyung S. Park dba Quality Cleaners Center; DOCKET NUMBER: 2006-1150-DCL-E; TCEQ ID NUMBER: RN102753597; LOCATION: 18110 Midway, Suite 112, Dallas, Collin County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$889; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Jose B. Juarez dba JB Cleaners; DOCKET NUMBER: 2006-1643-DCL-E; TCEQ ID NUMBER: RN104028014; LOCATION: 2865 South Richey Street, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Mario Yague dba Arvey Park; DOCKET NUMBER: 2005-1018-PWS-E; TCEQ ID NUMBER: RN102323250; LOCATION: 11200 Montana Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: recreational vehicle park with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and

§290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis and by failing to post a public notification of the monitoring violations; and 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect and submit repeat water samples within 24 hours of being notified of a total coliform positive sample result and by failing to post public notice of the failure to conduct repeat sampling; PENALTY: \$2,745; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(8) COMPANY: SBBQS, Inc.; DOCKET NUMBER: 2005-1615-AIR-E; TCEQ ID NUMBER: RN101747905; LOCATION: 1206 North Frisco Street, Henderson, Rusk County, Texas; TYPE OF FACILITY: meat processing plant; RULES VIOLATED: 30 TAC §101.4, and THSC, §382.085(b), by failing to control odorous emissions from its wastewater ponds from impacting off-site receptors; PENALTY: \$1,050; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Stuart Standley dba Total Lawn Care; DOCKET NUMBER: 2006-1801-LII-E; TCEQ ID NUMBER: RN104859806; LOCATION: 15552 Schank Road, Conroe, Montgomery County, Texas; TYPE OF FACILITY: landscape care business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), and TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; PENALTY: \$625; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200702370

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 12, 2007



### Notice of Water Quality Applications

The following notices were issued during the period of June 7, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

DOUBLE DIAMOND UTILITIES CO. has applied for a renewal of TPDES Permit No. 14373-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,500 gallons per day. The facility is located at 1500 Retreat Boulevard, approximately 8/10 mile southeast of the intersection of Retreat Boulevard and Farm-to-Market Road 1434, approximately 10 miles southwest of downtown Cleburne in Johnson County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 50 has applied for a renewal of TPDES Permit No. WQ0013228001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The facility is located at 22122 Bellaire Boulevard, approximately 4,600 feet southeast of the intersection of Farm-to-Market Road 1093 and Grand Parkway in Fort Bend County, Texas.

NOTTINGHAM COUNTRY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 12479-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located approximately 4,000 feet east of the intersection of South Fry Road and Stone Lodge, adjacent to Mason Creek in Harris County, Texas.

PANDA HEREFORD ETHANOL, L.P. which proposes to operate an ethyl alcohol fuel manufacturing facility, has applied for a new permit, Proposed Permit No. WQ0004822000 to authorize the disposal of reverse osmosis reject water, and TK Condenser, boiler, and cooling tower blowdown at an annual average flow not to exceed 100,800 gallons per day and a daily maximum flow not to exceed 150,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The location of the facility site and evaporation ponds are south of the intersection of U.S. Highway 60 and County Road 8, across U.S. Highway 60 from the Hereford Municipal Airport, and northeast of the City of Hereford, Deaf Smith County, Texas.

TRAVIS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 17 has applied to the TCEQ for a new permit, Proposed Permit No. WQ0013294002, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via a non-public access subsurface drip irrigation system with a minimum area of 11.48 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities will be located approximately 1,000 feet southwest of the intersection of Highland Drive and Lago Vista Drive and approximately 500 feet south of Iowa Street and Port Arthur Street; and the disposal site will be located approximately 900 feet southwest of the intersection of Iowa Street and Port Arthur Street and approximately 750 feet northwest of Custer Court and just east of Richardson Drive in Travis County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.**

CITY OF HOUSTON has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the City to haul sludge from the Harris County Municipal Utility District No. 203 Wastewater Treatment Facility to any of the City's other permitted facilities. The facility is located approximately 400 feet south of the intersection of Gears Road and Spears Road on the south side of Greens Bayou in Harris County, Texas.

#### INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200702408

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 13, 2007

## Texas Ethics Commission

### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

#### Deadline: 8-Day Pre-Election Report Due October 30, 2006

Rhonda K. Coleman, Katy Area New Democratic Organization, 22410 Bristolwood Court, Katy, Texas 77494-8209

#### Deadline: Annual Report of Unexpended Funds Due January 16, 2007

Andrew G. Khoury, P.O. Box 1151, Longview, Texas 75606-1151

#### Deadline: Semiannual Report for Candidates and Officeholders Due January 16, 2007

Jack F. Borden Sr., P.O. Box 191913, Dallas, Texas 75219

Darrell R. Grear, P.O. Box 649, Rockdale, Texas 76567

Kerry L. Horn, P.O. Box 11, Covington, Texas 76636

Greg A. Kauffman, 2315 Rock Creek Rd., Crowley, Texas 76036

John Lujan III, 3280 Owenwood, San Antonio, Texas 78264

William Robert McKelvain, 10502 FM 2408, Moran, Texas 76464

John R. McLeod, 1307 Wilderness St., Denton, Texas 76205

Dorothy M. Olmos, 102 Funston St., Houston, Texas 77012

Phillip S. Smart, P.O. Box 217, Ferris, Texas 75125

Christopher D. Youngblood, 125 Timberview Ct., Burleson, Texas

#### Deadline: Semiannual Report for Committees due January 16, 2007

Irismelda R. Benavides, Austin Women's Political Caucus, P.O. Box 1107, Austin, Texas 78767

Martha Failing, Harris County Democratic Lawyers, 1 Pinedale St., Houston, Texas 77006

Russell J. Hargraves, Texas Republican Alliance, 7311 Bluestone, San Antonio, Texas 78249-3644

Paul Holden, ABC of Texas, 10805 Chestnut Ridge Rd., Austin, Texas 78726

Brian J. Welker, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

#### Deadline: Monthly Report Due February 5, 2007

Phyllis A. Traylor, Montgomery County Law Enforcement Association, 14467 FM 1484, Conroe, Texas 77303-4143

#### Deadline: Monthly Report Due March 5, 2007

Thao Dao, Vietnamese American Voters Network PAC, 11210 Bellaire Blvd. #126A, Houston, Texas 77072

TRD-200702281

David Reisman

Executive Director

Texas Ethics Commission

Filed: June 6, 2007

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rates--Ambulance Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 10, 2007, at 8:30 a.m. to receive public comment on proposed Medicaid rate increases for ambulance services. The public hearing will be held in the Lone Star Conference Room of the HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing

will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** The proposed Medicaid rates for ambulance services, which are effective September 1, 2007, are as follows:

Type of Service*	Procedure Code	Procedure Code Modifier**	Current Rate	Proposed Rate
9	A0425		\$3.30	\$4.50
9	A0425	ET	Provider-specific reasonable charge	\$4.50
9	A0428		Provider-specific reasonable charge	\$200.00
9	A0429		Provider-specific reasonable charge	\$250.00
9	A0430		\$1,140.08	\$2,250.00
9	A0431		\$609.00	\$3,000.00

\*Type of Service Code Key: 9 = Other.

\*\*Procedure Code Modifier Key: ET = Emergency services (ground mileage per emergency transport); Empty cell = no modifier required.

**Methodology and Justification.** The current Medicaid reimbursement methodology rules for ambulance services at 1 TAC §355.8600 are in the process of being revised effective September 1, 2007, to reflect the change from a methodology based on provider-specific reasonable charges to one based on statewide, flat fees. The proposed rule amendments will be published in the July 6, 2007, issue of the *Texas Register*. The Legislature under the 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57(b)(3)(ii)(c), House Bill 1, 80th Legislature, Regular Session, 2007) appropriated \$31.3 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for ambulance services based on the above proposed rates and revised reimbursement methodology.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

**\*Required Notice:** The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five charac-

ter identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.

TRD-200702402

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007



### Notice of Public Hearing on Proposed Medicaid Payment Rates--Dental Services

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 10, 2007, at 2:00 p.m. to receive public comment on proposed Medicaid rate increases for dental services. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the HHSC, Braker Center, Building H, located at

11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** The proposed Medicaid rates for dental services will be effective September 1, 2007. HHSC proposes to increase the payments for specific dental codes that have been determined to ensure increased access and preventive care for Medicaid eligible clients. Preventive care examples include comprehensive and periodic evaluations and fluoride applications. The reimbursement methodology for physician/professional services at 1 TAC §355.8085 describes access-based reimbursement fees. These access-based fees are for individual services based upon historical payments adjusted, where HHSC or its designee deems necessary, to account for deficiencies relating to the adequacy of access to health care services, to ensure adequate participation in the Medicaid program by physicians and other practitioners, and to ensure the ability of the eligible Medicaid population to receive adequate health care services in an appropriate setting. The specific dental procedure codes for this rate hearing will be included in the briefing package that will be available on June 25, 2007.

**Methodology and Justification.** The Medicaid reimbursement methodology rules for dental services are located at 1 TAC §§355.8085, 355.8441(11), and 355.455(b). The 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57, House Bill 1, 80th Legislature, Regular Session, 2007) appropriated \$281.3 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for dental services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702412

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007



#### Notice of Public Hearing on Proposed Medicaid Payment Rates--Elimination of 2.5% Medicaid Payment Reduction

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing to receive public comment on the proposed elimination of the 2.5 percent Medicaid payment reduction for Medicaid professional providers and outpatient facilities, which was implemented September 1, 2003, in accordance with legislation enacted during the 78th Legislature, Regular Session, 2003. The public hearing will be held in the Lone Star Conference Room of the

Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** The proposal will eliminate the use of 2.5 percent Medicaid payment reduction factor and will increase the Medicaid payments to Medicaid professional providers and outpatient facilities for services covered by the Medicaid payment reduction that was implemented September 1, 2003. The elimination of the use of the 2.5 percent Medicaid payment reduction factor is effective September 1, 2007.

**Methodology and justification.** The 2.5 percent payment reduction was implemented as a result of the 2004-2005 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. The actual rates were not reduced effective September 1, 2003. Instead, a 2.5 percent payment reduction factor was applied to Medicaid payments for Medicaid professional and outpatient facility services at the end of the claims payment process, as the last step before calculation of the actual payment.

The 2.5 percent Medicaid payment reduction was applicable to professional services delivered by physicians and other professional providers (e.g., ambulance providers; clinical laboratory services providers; advanced practice nurses (APNs), including nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse midwives (CNMs), certified registered nurse anesthetists (CRNAs); psychologists; licensed professional counselors (LPCs); licensed clinical social workers (LCSWs); licensed marriage and family therapists (LMFTs); podiatrists; chiropractors; home health agencies; Texas Health Steps (THSteps) providers; laboratories; radiology providers; radiation therapy providers; family planning providers; hearing aid services providers; optometrists, opticians, and other vision care providers; in-home services for total parenteral hyperalimentation; physical therapy providers; occupational therapy providers; audiologists; speech-language-pathology providers; respiratory care providers; Case Management for Children and Pregnant Women providers; physician assistants (PAs); and the like) and outpatient facilities (e.g., hospitals, ambulatory surgical centers (ASCs)/ hospital ASCs (HASCs); maternity service centers; renal dialysis facilities; birthing centers; tuberculosis clinics; and the like).

The 2.5 percent Medicaid payment reduction was not applicable to Medicaid payments for services provided by federally qualified health centers (FQHCs); rural health clinics (RHCs); services provided by public providers that fund the state share of their payments through certification of public expenditures; Targeted Case Management for Early Childhood Intervention services; payments for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS); payments for physician-administered drugs, biologicals, blood products, and radiopharmaceuticals; children's hospitals; Medicare crossover claims; and Indian Health Services.

The 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Legislature, Regular Session, 2007) appropriated \$103.8 million general revenue funds for the State Fiscal Year 2008-09 biennium for this restoration.

**Briefing Package.** A briefing package describing the proposed elimination of the 2.5 percent Medicaid payment reduction will be available

on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702405

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007



#### Notice of Public Hearing on Proposed Medicaid Payment Rates--Physician and Other Professional Services for Client under Age 21

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 10, 2007, at 3:30 p.m. to receive public comment on Medicaid proposed rate increases for physician and other professional services delivered to clients under age 21. The hearing will be held in compliance with Human Resources Code, §32.0282, and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** The proposed Medicaid rates for physician and other professional services delivered to clients under age 21 will be effective September 1, 2007. The proposed reimbursement rates are specific to services provided to clients under the age of 21 and are intended to increase service access and preventive care availability. Under the proposed methodology, HHSC will fully expend the appropriations authorized in the 2008-2009 General Appropriations Act (Article II, Special Provisions, Sections 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated \$233.5 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for physician and specialist services delivered to clients under age 21.

The proposed reimbursement rates include the following physician provider types: physicians (i.e., MDs, DOs); dentists; advanced practice nurses (including nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists); and physician assistants. Additionally, the other professionals include: psychologists; licensed professional counselors; licensed marriage and family therapists; licensed clinical social workers; CCP social workers; podiatrists; chiropractors; optometrists; opticians; certified

respiratory care providers; CCP groups; audiologists; prosthetists; orthotists; CCP providers; and genetics providers.

The proposed reimbursement rates also include laboratory services provided by pathologists and radiology services provided by radiologists but only for type of service "I" (interpretation) performed by the professional. Type of Service "T" (technical component) is not included.

The process for the proposed increases to the reimbursement rates for services provided to clients under the age of 21 followed the steps described below:

1. Target Increases for THSteps (Type of Service "S"): HHSC proposes to update the entire range of THSteps screening services (Preventive Medicine Evaluation & Management Services) by increasing the rates for new clients to the 2007 Medicare fee schedule for services to new clients. For services to established clients, HHSC proposes to increase the existing Medicaid fee to 92% of the fee for new clients. This methodology has several desirable effects, which include payment differentials for new patients (100% of Medicare) versus established patients (92% of Medicare) and payment differentials based on age.

2. THSteps Immunization Administration: HHSC proposes to increase the THSteps immunization administration fee by 30% of the current fees. This method will be applied consistently to all immunization administration fees (i.e., no difference in the payments for new patients versus established patients).

3. Target Increases for Evaluation and Management Codes: HHSC proposes to increase all remaining Evaluation & Management services by 27.5% across-the-board above existing fees. Since the update to the 2007 Medicare Relative Value Units (RVUs) for these procedure codes would have exceeded the current appropriation, the fees were changed to access-based fees with a 27.5% increase.

4. Target Increases for Anesthesia Service Codes: HHSC proposes to increase the anesthesia service codes by updating the existing Medicaid base units to current Medicare or national base units. The update to Medicare or national base units will result in increases and decreases in the Medicaid fees. In addition to the base unit update, HHSC proposes to increase by 27.5% the two conversion factors for anesthesia services that are resource-based fees.

5. Non-THSteps Immunization Administration Codes: HHSC proposes to adjust non-THSteps immunization administration codes to the same fees as the THSteps immunization administration codes outlined in item 2 above.

6. Targeted Increases for Specific Mental Health Procedure Codes: HHSC proposes targeted increases for specific codes for psychiatric diagnostic interviews, comprehensive psychological assessments, and psychotherapy/psychological counseling.

7. Remaining Procedure Codes: HHSC proposes to update the remaining procedure codes to the 2007 Medicare RVUs. If the RVU update results in a fee lower than the current Medicaid fee, the fee will be changed to an access-based fee with a 5.0% increase.

**Methodology and justification.** The Medicaid reimbursement methodology rules for physician and other professional services are located at 1 TAC §355.8085. These rules provide for the establishment of resource-based reimbursement fees based upon the RVUs of the individual services as specified in the Medicare Fee Schedule. These rules also allow for the determination of access-based reimbursement fees, which are not based on the RVU methodology, for individual services to account for deficiencies relating to the adequacy of access to health care services, to ensure adequate participation in the Medicaid program by physicians and other practitioners, and to ensure that the

eligible Medicaid population receives adequate health care services in an appropriate setting. The 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007) appropriated \$233.5 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for physician and specialist services delivered to clients under age 21.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702406

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007

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**Notice of Public Hearing on Proposed Medicaid Payment Rates--Therapy Services Under 21 by HHAs**

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on July 10, 2007, at 9:30 a.m. to receive public comment on proposed Medicaid rates for physical, occupational, and speech-language-pathology therapy services delivered to clients under age 21 by home health agencies. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** The proposed Medicaid rates for physical, occupational, and speech-language-pathology therapy services delivered to clients under age 21 by home health agencies, which will be effective September 1, 2007, are as follows:

Type of Service*	Procedure Code	Procedure Code Modifier**	Current Visit Rate	Proposed Visit Rate
1	92506		\$119.61	\$210.00
1	92507		\$119.61	\$140.00
1	92508		\$119.61	\$70.00
1	92526		\$119.61	\$140.00
1	92610		\$119.61	\$210.00
1	97001		\$116.36	\$140.00
1	97002		\$116.36	\$140.00
1	97003		\$118.62	\$140.00
1	97004		\$118.62	\$140.00
1	97012	GP	\$116.36	\$140.00
1	97012	GO	\$118.62	\$140.00
1	97014	GP	\$116.36	\$140.00
1	97014	GO	\$118.62	\$140.00
1	97016	GP	\$116.36	\$140.00
1	97016	GO	\$118.62	\$140.00
1	97018	GP	\$116.36	\$140.00
1	97018	GO	\$118.62	\$140.00
1	97022	GP	\$116.36	\$140.00
1	97022	GO	\$118.62	\$140.00
1	97024	GP	\$116.36	\$140.00
1	97024	GO	\$118.62	\$140.00
1	97026	GP	\$116.36	\$140.00
1	97026	GO	\$118.62	\$140.00
1	97028	GP	\$116.36	\$140.00
1	97028	GO	\$118.62	\$140.00
1	97032	GP	\$116.36	\$140.00
1	97032	GO	\$118.62	\$140.00
1	97033	GP	\$116.36	\$140.00
1	97033	GO	\$118.62	\$140.00
1	97034	GP	\$116.36	\$140.00
1	97034	GO	\$118.62	\$140.00
1	97035	GP	\$116.36	\$140.00
1	97035	GO	\$118.62	\$140.00
1	97036	GP	\$116.36	\$140.00
1	97036	GO	\$118.62	\$140.00
1	97039	GP	\$116.36	\$140.00
1	97039	GO	\$118.62	\$140.00
1	97110	GP	\$116.36	\$140.00
1	97110	GO	\$118.62	\$140.00
1	97112	GP	\$116.36	\$140.00
1	97112	GO	\$118.62	\$140.00
1	97113	GP	\$116.36	\$140.00
1	97113	GO	\$118.62	\$140.00
1	97116	GP	\$116.36	\$140.00
1	97116	GO	\$118.62	\$140.00
1	97124	GP	\$116.36	\$140.00
1	97124	GO	\$118.62	\$140.00

1	97139	GP	\$116.36	\$140.00
1	97139	GO	\$118.62	\$140.00
1	97140	GP	\$116.36	\$140.00
1	97140	GO	\$118.62	\$140.00
1	97150	GP	\$116.36	\$70.00
1	97150	GO	\$118.62	\$70.00
1	97530	GP	\$116.36	\$140.00
1	97530	GO	\$118.62	\$140.00
1	97535	GP	\$116.36	\$140.00
1	97535	GO	\$118.62	\$140.00
1	97537	GP	\$116.36	\$140.00
1	97537	GO	\$118.62	\$140.00
1	97542	GP	\$116.36	\$140.00
1	97542	GO	\$118.62	\$140.00
1	97750	GP	\$116.36	\$140.00
1	97750	GO	\$118.62	\$140.00
1	97760	GP	\$116.36	\$140.00
1	97760	GO	\$118.62	\$140.00
1	97761	GP	\$116.36	\$140.00
1	97761	GO	\$118.62	\$140.00
1	97762	GP	\$116.36	\$140.00
1	97762	GO	\$118.62	\$140.00
1	97799	GP	\$116.36	\$140.00
1	97799	GO	\$118.62	\$140.00

\*Type of Service Code Key: 1 = Medical Services.

\*\*Procedure Code Modifier Key: GO = Occupational Therapy; GP = Physical Therapy;  
Empty cell = no modifier required.

**Methodology and justification.** The current Medicaid reimbursement methodology rules for these services at 1 TAC §355.8441(5), (6), and (7) are in the process of being revised effective September 1, 2007, to reflect the change from the methodology used for home health services at 1 TAC §355.8021 to one based on statewide, flat fees. The proposed rule amendments will be published in the July 6, 2007, issue of the Texas Register. The 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(b)(3)(ii)(d), H.B. 1, 80th Legislature, Regular Session, 2007) appropriated \$39.7 million general revenue funds for the State Fiscal Year 2008-09 biennium for Medicaid rate increases for these services based on the above proposed fees and revised reimbursement methodology.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400,

Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

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TRD-200702403

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007





## Notice of Public Hearing on Proposed Medicaid Payment Rates--VDP

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on July 10, 2007, at 10:30 a.m. to receive public comment on (1) the proposed restoration of the Medicaid payment to the 2003 level for the Vendor Drug Program (VDP) dispensing expense portion of the dispensing fee, and (2) an increase to the Medicaid dispensing expense above what is restored. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** Under the proposed restoration to the 2003 level for the VDP dispensing expense, the Medicaid payment will be \$5.27. Under the proposed increase to the restored VDP dispensing expense, the Medicaid payment will be \$7.50. These proposed changes will be effective September 1, 2007.

**Methodology and Justification.** The proposed restoration of the dispensing expense is made in accordance with the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007). This change will bring the dispensing expense in line with the methodology in 1 TAC §355.8551. The proposed dispensing expense increase above restoration is calculated in accordance with 1 TAC §355.8551, which addresses the Reimbursement for Pharmacy Services Dispensing Fee.

**Briefing Package.** A briefing package describing the proposed payments will be available on or after June 25, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payments may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702401

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: June 13, 2007



## Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	American Diagnostic Medicine Inc	L06068	Houston	00	05/21/07
Houston	CHCA West Houston LP DBA West Houston Medical Center	L06055	Houston	00	05/17/07
Nederland	Lucite International Inc	L06076	Nederland	00	05/21/07
Tatum	TXU Mining Company	L06081	Tatum	00	05/17/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Addison	Mobile Diagnostic Systems Inc DBA Diagnostic Health Services	L03212	Addison	30	05/31/07
Alice	Usman Qureshi MD PA DBA Alice Heart Center	L05366	Alice	02	05/18/07
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	22	05/18/07
Arlington	Metropex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	80	05/17/07
Arlington	Texas Oncology PA DBA Texas Cancer Center Arlington	L05116	Arlington	16	05/18/07
Austin	ARA Imaging	L05862	Austin	19	05/22/07
Austin	Austin Radiological Association	L00545	Austin	127	05/18/07
Austin	Cedra Clinical Research LLC	L05723	Austin	03	05/18/07
Austin	Southwest Regional Cancer Center	L06052	Austin	01	05/16/07
Bay City	Matagorda County Hospital District DBA Matagorda General Hospital	L02701	Bay City	13	05/18/07
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	78	05/29/07
Beaumont	Metalforms Inc	L02261	Beaumont	36	05/21/07
Bedford	Texas Oncology PA	L05606	Bedford	14	05/31/07
Bremond	Altura Power LP	L04280	Bremond	11	05/22/07
Carrollton	Patients Comprehensive Diagnostic & Radiation Therapy Center Inc	L05661	Carrollton	03	05/31/07
Clifton	Goodall Witcher Healthcare Foundation	L03427	Clifton	14	05/18/07
Corpus Christi	Clinical Nuclear Services Inc	L05368	Corpus Christi	10	05/31/07
Dallas	Dallas Cardiology Associates DBA Heartplace Methodist	L05541	Dallas	05	05/31/07
Dallas	Desoto Surgicare Partners LTD DBA North Texas Surgery Center	L05873	Dallas	01	05/18/07
Dallas	Environmental Health Center - Dallas	L05327	Dallas	06	05/18/07
Dallas	Medi Physics DBA GE Healthcare	L05529	Dallas	18	05/22/07
Dallas	Medi Physics Inc DBA GE Healthcare	L05529	Dallas	17	05/18/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	171	05/22/07
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	89	05/18/07
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	08	05/23/07
Diboll	Tin Inc DBA Temple Inland Fiber Products Op	L00935	Diboll	29	05/24/07
El Paso	Pan American General Hospital LLC DBA Southwestern General Hospital	L02338	El Paso	33	05/30/07
El Paso	Providence Memorial Hospital	L02353	El Paso	91	05/17/07

## AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend- ment #	Date of Action
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05771	El Paso	06	05/29/07
Fairfield	East Texas Medical Center Fairfield	L05195	Fairfield	06	05/29/07
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	15	05/24/07
Fort Worth	Dallas Cardiology Associates PA DBA Heartplace Huguley	L05883	Fort Worth	03	05/18/07
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	22	05/24/07
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	21	05/25/07
Freeport	Brazos Pipe & Steel Fabricators Inc	L02186	Freeport	26	05/21/07
Frisco	Frisco Medical Center LLP DBA Medical Center at Frisco	L06036	Frisco	02	05/29/07
Garland	Baylor Medical Center at Garland	L01565	Garland	44	05/24/07
Gatesville	Coryell County Memorial Hospital Authority DBA Coryell Memorial Hospital	L02391	Gatesville	28	05/17/07
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	26	05/29/07
Grapevine	Cardiology Specialties	L05779	Grapevine	02	05/18/07
Grapevine	Cardiovascular Consultants of North Texas	L04627	Grapevine	18	05/24/07
Harlingen	AM Cardiovascular Specialist	L06057	Harlingen	01	05/17/07
Harlingen	Cockins Kim A MD FACC DBA Cardiac Imaging Associates	L05845	Harlingen	04	05/15/07
Houston	CHCA Woman's Hospital LP DBA The Women's Hospital of Texas	L04834	Houston	15	05/31/07
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	60	05/29/07
Houston	Comprehensive Heart Care PA	L05710	Houston	07	05/21/07
Houston	Cypress Fairbanks Cardiology Associates	L04353	Houston	19	05/24/07
Houston	Diagnostic Nuclear Imaging	L05769	Houston	03	05/18/07
Houston	Eric A Orzeck MD PA	L01599	Houston	16	05/25/07
Houston	Kelsey Seybold Clinic PA	L00391	Houston	61	05/31/07
Houston	Kenall Inc	L05572	Houston	03	05/25/07
Houston	Memorial Cardiology Associates PA	L05349	Houston	07	05/21/07
Houston	Memorial MRI & Diagnostic LLC DB Memorial Nuclear Imaging LP	L05997	Houston	04	05/29/07
Houston	Nuclear Imaging Services	L05775	Houston	31	05/18/07
Houston	Nuclear Imaging Services	L05775	Houston	32	05/31/07
Houston	Nuclear Imaging Services LP	L05791	Houston	03	05/23/07
Houston	Park Plaza Hospital	L01812	Houston	21	05/18/07
Houston	Rice Nuclear Diagnostics	L05830	Houston	08	05/22/07
Houston	Saint-Gobain Ceramics & Plastics	L04895	Houston	09	05/30/07
Houston	The Methodist Hospital	L00457	Houston	150	05/29/07
Houston	Valco Instruments Company Inc	L01572	Houston	24	05/22/07
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	68	05/31/07
Jacksonville	Regional Healthcare Center DBA Mother Frances Hospital - Jacksonville	L05362	Jacksonville	24	05/30/07
Katy	Cardiology Center of Houston PA	L05400	Katy	06	05/17/07
Katy	St Catherine Health & Wellness Center	L05310	Katy	12	05/29/07
Kilgore	Wooley Fishing Tool Inc	L02915	Kilgore	07	05/18/07
La Porte	Ineos USA LLC	L00088	La Porte	55	05/24/07
La Porte	Sunoco Inc (R&M) DBA Sunoco Chemicals	L02778	La Porte	19	05/18/07
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	61	05/31/07
Laredo	Metabolic Imaging of Laredo LLP	L05890	Laredo	03	05/18/07
Llano	Llano County Hospital Authority DBA Llano Memorial Healthcare System	L04438	Llano	23	05/17/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amend- ment #	Date of Action
Lubbock	Rosa of the South Plains LLP DBA Rosa of the South Plains	L05484	Lubbock	12	05/29/07
Lufkin	Piney Woods Healthcare System DBA Woodland Heights Medical Center	L01842	Lufkin	53	05/29/07
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	82	05/23/07
Midland	American X-Ray & Inspection Services Inc DBA AXIS Inc	L05974	Midland	02	05/25/07
Mount Pleasant	DX Imaging LTD DBA Open Imaging of Mount Pleasant	L05445	Mount Pleasant	10	05/31/07
New Braunfels	Cemex USA	L02809	New Braunfels	28	05/21/07
North Richland Hills	Columbia North Hills Hospital Subsid. LP DBA North Hills Hospital	L02271	North Richland Hills	53	05/29/07
Odessa	Cemex Cement of Texas LP	L00118	Odessa	26	05/31/07
Orange	Baptist Hospitals of Southeast Texas DBA Memorial Hermann Baptist Orange	L01597	Orange	31	05/18/07
Orange	E I Dupont De Nemours & Co	L00005	Orange	69	05/31/07
Pasadena	CHCA Bayshore LP DBA Bayshore Medical Center	L00153	Pasadena	81	05/31/07
Pasadena	Kaneka Texas Corporation	L05050	Pasadena	04	05/23/07
Pasadena	Marathon Pipe Line LLC	L05303	Pasadena	06	05/25/07
Pasadena	Microtech Services Inc	L04656	Pasadena	11	05/21/07
Plano	Cardiovascular Consultants of North Texas DBA Cardiovascular Consultants Plano	L05690	Plano	04	05/31/07
Plano	Columbia Medical Center of Plano Subsid. DBA Medical Center of Plano	L02032	Plano	83	05/23/07
Plano	Dallas Cardiology Associates DBA Heartplace Plano	L05699	Plano	06	05/18/07
Plano	North Texas Regional Cancer Center	L05357	Plano	10	05/18/07
Plano	Physician Reliance Network Inc DBA Tx. Oncology Plano West Cancer Ctr.	L05896	Plano	09	05/29/07
Plano	Presbyterian Hospital of Plano	L04467	Plano	45	05/17/07
San Antonio	Cardiology Clinic of San Antonio PA	L04489	San Antonio	34	05/18/07
San Antonio	Medical & Radiation Physics Inc	L01417	San Antonio	26	05/21/07
San Antonio	Medical & Radiation Physics Inc	L01417	San Antonio	27	05/31/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	230	05/21/07
San Antonio	Metro North Cardiovascular Associates PA DBA Metro North Clinic	L05235	San Antonio	15	05/23/07
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	24	05/18/07
San Antonio	San Antonio Heart Associates PA	L04860	San Antonio	21	05/18/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	163	05/17/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	164	05/29/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	165	06/01/07
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	15	05/23/07
Sugarland	Heart & Vascular Association of Houston PA	L05892	Sugarland	03	05/18/07
Sugarland	Memorial Hermann Healthcare System DBA Memorial Hermann Sugarland Hospital	L03457	Sugarland	32	05/31/07
Sunray	Diamond Shamrock Refining Company LP	L04398	Sunray	16	05/31/07
Temple	Scott & White Memorial Hospital & Scott Sherwood & Brindley Foundation DBA Scott & White Memorial Hospital	L00331	Temple	78	05/29/07

## AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Texarkana	Collom & Carney Clinic Association	L05524	Texarkana	03	05/18/07
Texas City	BP Products North America Inc	L00254	Texas City	60	05/23/07
Throughout Tx	Mid-Tex Engineering & Testing LLC	L05175	Abilene	03	05/23/07
Throughout Tx	MPM Products Inc	L00967	Arlington	38	05/22/07
Throughout Tx	Adams Brothers Inc	L04771	Athens	08	05/24/07
Throughout Tx	Fugro Consultants Inc	L03875	Austin	21	05/24/07
Throughout Tx	MLA Labs Inc	L01820	Austin	31	05/21/07
Throughout Tx	MLA Labs Inc	L01820	Austin	32	05/24/07
Throughout Tx	Texas Department of State Health Services	L05865	Austin	04	05/17/07
Throughout Tx	Texas Department of Transportation	L00197	Austin	128	05/30/07
Throughout Tx	The University of Texas at Austin	L00485	Austin	74	05/17/07
Throughout Tx	PMI Specialist Inc	L04686	Baytown	16	05/25/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	56	05/25/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	57	06/01/07
Throughout Tx	Lind & Associates Inc DBA T & N Laboratories & Engineering	L04417	Beaumont	14	05/30/07
Throughout Tx	RK Hall Construction	L04886	Brashear	11	05/31/07
Throughout Tx	Patterson Tubular Services Inc	L03148	Channelview	26	05/18/07
Throughout Tx	Professional Service Industries	L04939	Corpus Christi	10	05/22/07
Throughout Tx	Diamondback Energy Service DBA Diamondback Pumping Services LP	L06016	Cresson	05	05/29/07
Throughout Tx	City of Dallas Water Utilities	L03829	Dallas	16	05/18/07
Throughout Tx	Giles Engineering Associates Inc	L04919	Dallas	10	05/30/07
Throughout Tx	JRV Paving Inc	L05307	Dallas	06	05/23/07
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	34	05/22/07
Throughout Tx	Team Consultants Inc	L04012	Dallas	11	05/24/07
Throughout Tx	Irisndt Inc	L04769	Deer Park	39	05/23/07
Throughout Tx	Raba-Kistner Consultants (SW) Inc	L02337	El Paso	23	05/24/07
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	61	06/01/07
Throughout Tx	Bureau Veritas North America Inc	L03157	Fort Worth	50	05/17/07
Throughout Tx	CMJ Engineering Inc	L05564	Fort Worth	05	05/31/07
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	68	05/23/07
Throughout Tx	Texas QA Services Inc	L04601	Grand Prairie	22	05/30/07
Throughout Tx	Aitec USA Investments Inc DBA Aitec USA Inc & Weldsonix Inc	L05718	Houston	30	05/25/07
Throughout Tx	Associated Testing Laboratories Inc	L01553	Houston	26	05/25/07
Throughout Tx	Aster Corporation	L04741	Houston	27	05/25/07
Throughout Tx	Component Sales & Service Inc	L02243	Houston	27	05/25/07
Throughout Tx	Metco	L03018	Houston	170	05/24/07
Throughout Tx	Paradigm Consultants Inc	L04875	Houston	05	05/29/07
Throughout Tx	Q Pro Inc	L05980	Houston	02	05/15/07
Throughout Tx	QC Laboratories Inc	L04750	Houston	21	05/23/07
Throughout Tx	Remington Engineering & Testing LLC DBA Remington Engineering	L05642	Houston	10	05/23/07
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	128	05/17/07
Throughout Tx	Weldsonix Inc	L05718	Houston	31	06/01/07
Throughout Tx	Oceaneering International Inc	L04463	Ingleside	52	05/18/07
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	01	05/24/07
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	02	05/31/07
Throughout Tx	Master Industries Inc	L05872	Liberty	10	05/23/07
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	64	06/01/07
Throughout Tx	City of Lubbock	L01735	Lubbock	33	05/22/07
Throughout Tx	Terra Testing Inc	L02464	Lubbock	33	05/22/07
Throughout Tx	New Tech Systems Inc	L05098	Midland	05	05/18/07
Throughout Tx	Western Anatec Inc	L04865	Nederland	71	05/31/07
Throughout Tx	Apollo Perforators Inc	L03020	Odessa	19	05/30/07

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	64	05/25/07
Throughout Tx	Sivalls Inc	L02298	Odessa	35	05/17/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	125	05/31/07
Throughout Tx	NDS Products Inc	L00991	Pasadena	44	05/22/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	27	05/29/07
Throughout Tx	Techorr USA LLC	L05972	Pasadena	26	05/18/07
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	75	05/17/07
Throughout Tx	Turner Specialty Services LLC	L05417	Pasadena	28	05/22/07
Throughout Tx	Costal Wireline Services Inc	L04239	Pearland	12	05/24/07
Throughout Tx	Catch a Fault	L02725	Ponder	20	05/18/07
Throughout Tx	Fort Bend County Road & Bridge	L05346	Richmond	01	05/30/07
Throughout Tx	Alcoa Inc	L04316	Rockdale	20	05/30/07
Throughout Tx	Burge-Martinez Consulting Inc	L05907	San Antonio	05	05/25/07
Throughout Tx	Hunter Industries LTD	L04175	San Marcos	07	05/30/07
Throughout Tx	Schlumberger Technology Corporation	L00109	Sugarland	53	05/24/07
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	46	05/23/07
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	47	05/31/07
Throughout Tx	K & N Perforators Inc	L02300	Victoria	29	05/22/07
Throughout Tx	TSI Laboratories Inc	L04767	Victoria	10	05/18/07
Throughout Tx	City of Weatherford	L04571	Weatherford	08	05/22/07
Trophy Club	Trophy Club Medical Center LP DBA Trophy Club Medical Center	L05827	Trophy Club	05	05/17/07
Waco	Baylor University	L00343	Waco	22	05/17/07
Wharton	South Texas Medical Clinics PA	L05163	Wharton	11	05/18/07
Wichita Falls	Saint-Gobain Vetrotex America Inc	L02269	Wichita Falls	34	05/24/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Leachman Cardiology Associates PA	L05229	Houston	07	05/18/07
Houston	Sheldon Rubenfeld MD	L04410	Houston	09	05/29/07
Humble	E John R Samuel MD PA	L05232	Humble	02	05/16/07
San Antonio	Hector R Villasenor MD PA	L04377	San Antonio	24	05/18/07
Sherman	Sherman Cardiovascular Care Associates PA	L05271	Sherman	07	05/29/07
Throughout Tx	Protechnics Environmental	L04477	Houston	16	05/10/07
Throughout Tx	Fugro Consultants LP	L04322	Pasadena	86	05/22/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Cardiovascular Ventures of West Houston Inc DBA Raytel Nuclear Imaging West Houston	L04882	Houston	17	05/25/07
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	71	05/17/07
Houston	Seqwright DNA Technology Services Inc	L05751	Houston	01	05/24/07
Rosenberg	Visons Metal	L05253	Rosenberg	02	05/23/07
Terrell	Terrell Healthcare LP DBA Medical Center at Terrell	L03048	Terrell	19	05/17/07
Throughout Tx	Hubco Inc	L04889	Houston	03	05/23/07
Throughout Tx	W R Welborn & Son Inc	L05044	Judson	01	05/23/07
Throughout Tx	Precision Energy Services Inc	L04405	Midland	19	05/23/07
Throughout Tx	Science Applications International Corp	L05812	Port Arthur	01	05/24/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200702378  
Lisa Hernandez  
Deputy General Counsel  
Department of State Health Services  
Filed: June 12, 2007



## Texas Department of Insurance

### Company Licensing

Application for admission to the State of Texas by AMERICA'S 1st CHOICE HEALTH PLANS, INC., a foreign life, accident and/or health company. The home office is in West Columbia, South Carolina.

Application for admission to the State of Texas by GUARDIAN NATIONAL TITLE INSURANCE COMPANY, a foreign title company. The home office is in Warrensville Heights, Ohio.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200702404  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: June 13, 2007



## Texas Department of Insurance, Division of Workers' Compensation

### Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation published a notice of proposed rule review for Chapters 112, 133, 134 and 141 in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3377 and 3378). The notice contains the following errors as submitted.

On page 3377, right column, Title 28, Part 2, 3rd paragraph: The mail code is incorrect. Instead of "MS 4-D" it should read "MS-4D" and "Texas Workers' Compensation Commission" should read "Texas Department of Insurance, Division of Workers' Compensation."

The sentence should read as follows: "Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 9, 2007 and submitted to Victoria Ortega, Legal Services, MS-4D, The Texas Department of Insurance, Division of

Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609." (TRD-200702102)

On page 3378, left column, 2nd paragraph: The mail code is incorrect. Instead of "MS 4-D" it should read "MS-4D" and "Texas Workers' Compensation Commission" should read "Texas Department of Insurance, Division of Workers' Compensation."

The sentence should read as follows: "Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 9, 2007 and submitted to Victoria Ortega, Legal Services, MS-4D, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609." (TRD-200702103)

On page 3378, left column, 5th paragraph: The mail code is incorrect. Instead of "MS 4-D" it should read "MS-4D" and "Texas Workers' Compensation Commission" should read "Texas Department of Insurance, Division of Workers' Compensation."

The sentence should read as follows: "Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 9, 2007 and submitted to Victoria Ortega, Legal Services, MS-4D, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609." (TRD-200702104)

TRD-200702414



## Texas Lottery Commission

### Instant Game Number 815 "Gold Rush Luck"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 815 is "GOLD RUSH LUCK". The play style is "multiple games".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 815 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 815.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1X, 2X, A,

K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, 1, X SYMBOL, O SYMBOL, 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000, \$5,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 815 - 1.2D

PLAY SYMBOL	CAPTION
1X	PRIZE
2X	PRIZE
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
X SYMBOL	
O SYMBOL	
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI

30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 815 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100, \$200 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (815), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 815-0000001-001.

L. Pack - A pack of "GOLD RUSH LUCK" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLD RUSH LUCK" Instant Game No. 815 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GOLD RUSH LUCK" Instant Game is determined once the latex on the ticket is scratched off to expose 56 (fifty-six) Play Symbols. For GAME 1, if the player reveals a "2X" symbol, the player wins DOUBLE the winnings on the entire ticket. For GAME 2, if YOUR CARD play symbol beat the DEALER'S CARD play symbol in the same row, the player wins the PRIZE shown for that row. Aces are high. For GAME 3, if a player reveals 3 "X's" or 3 "O's" in the any row, column or diagonal line, the player wins the PRIZE shown in PRIZE box. For GAME 4, if the player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 56 (fifty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The \$5,000 and \$50,000 prize symbols will always appear on non-winning tickets and will each appear on \$1,000 and lower winning tickets when prize structure permits.

C. GAME 2: No duplicate non-winning rows.

D. GAME 2: No matching non-winning YOUR CARD play symbols.

E. GAME 2: No matching non-winning DEALER'S CARD play symbols.

F. GAME 2: No duplicate non-winning prize symbols.

G. GAME 2: Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. GAME 2: No ties between the YOUR CARD play symbol and the DEALER'S CARD play symbol.

I. GAME 3: Every ticket will contain four "X's" and five "O's" or four "O's" and five "X's".

J. GAME 4: No duplicate LUCKY NUMBERS play symbols.

K. GAME 4: No duplicate non-winning YOUR NUMBER play symbols.

L. GAME 4: No more than 2 matching non-winning prize symbols in this game.

M. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "GOLD RUSH LUCK" Instant Game prize of \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLD RUSH LUCK" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLD RUSH LUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GOLD RUSH LUCK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GOLD RUSH LUCK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 815. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 815 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	672,000	7.50
\$10	470,400	10.71
\$20	134,400	37.50
\$40	12,600	400.00
\$50	50,400	100.00
\$100	17,430	289.16
\$200	2,520	2,000.00
\$500	1,176	4,285.71
\$1,000	33	152,727.27
\$5,000	20	252,000.00
\$50,000	8	630,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 815 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 815, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200702364

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 11, 2007



Instant Game Number 816 "Cherry Twist"

1.0 Name and Style of Game.

A. The name of Instant Game No. 816 is "CHERRY TWIST". The play style is "row/column/diagonal with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 816 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 816.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: X SYMBOL, O SYMBOL, CHERRY SYMBOL, \$2.00, \$3.00, \$4.00, \$12.00, \$20.00, \$50.00, \$100, \$1,000, and \$25,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 816 - 1.2D

PLAY SYMBOL	CAPTION
X SYMBOL	
O SYMBOL	
CHERRY SYMBOL	
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$12.00	TWELVE
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$25,000	25 THOU

E. Retailer Validation Code--Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 816 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
SIX	\$6.00
NIN	\$9.00
TWL	\$12.00
FTN	\$15.00
TWN	\$20.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$2.00, \$3.00, \$4.00, \$6.00, \$9.00, \$12.00, \$15.00, \$20.00, or \$24.00.

H. Mid-Tier Prize--A prize of \$36.00, \$40.00, \$50.00, \$60.00, \$100, or \$150 .

I. High-Tier Prize--A prize of \$1,000, \$3,000, or \$25,000.

J. Bar Code--A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 (thirteen) digit number consisting of the three (3) digit game number (816), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 816-0000001-001.

L. Pack--A pack of "CHERRY TWIST" Instant Game tickets contains 125 tickets packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C, and D configuration.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures; the State Lottery Act (Texas Government Code, Chapter 466); and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "CHERRY TWIST" Instant Game No. 816 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules; these Game Procedures; and the requirements set out on the back of each instant ticket. A prize winner in the "CHERRY TWIST" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. For each GAME, if the player reveals 3 "X"s or 3 "O"s in any one row, column, or diagonal, the player wins the PRIZE shown for that GAME. If the player reveals three (3) cherry symbols in any one row, column, or diagonal, the player wins TRIPLE the PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. There will be a predominance of \$20 and higher prize symbols on non-winning tickets.

D. No duplicate games on a ticket spot for spot.

E. No game will have more than one occurrence of three (3) matching symbols in a row, column or diagonal.

F. No game will contain more than three (3) matching symbols other than the "cherries" symbol.

G. The occurrence of three (3) "cherries" symbols appearing in a row, column, or diagonal will be as dictated by the prize structure.

H. Each game may win one time.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CHERRY TWIST" Instant Game prize of \$2.00, \$3.00, \$4.00, \$6.00, \$9.00, \$12.00, \$15.00, \$20.00, \$24.00, \$36.00, \$40.00, \$50.00, \$60.00, \$100, or \$150, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket, provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$36.00, \$40.00, \$50.00, \$60.00, \$100, or \$150 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above

prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CHERRY TWIST" Instant Game prize of \$1,000, \$3,000, or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CHERRY TWIST" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CHERRY TWIST" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CHERRY TWIST" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 816. The approximate number and value of prizes in the game are as follows:



Figure 3: GAME NO. 816 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	906,240	7.81
\$3	283,200	25.00
\$4	169,920	41.67
\$6	141,600	50.00
\$9	42,480	166.67
\$12	113,280	62.50
\$15	28,320	250.00
\$20	14,160	500.00
\$24	14,160	500.00
\$36	7,080	1,000.00
\$40	5,900	1,200.00
\$50	2,950	2,400.00
\$60	4,720	1,500.00
\$100	4,720	1,500.00
\$150	1,711	4,137.93
\$1,000	100	70,800.00
\$3,000	50	141,600.00
\$25,000	13	544,615.38

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 816 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 816, the State Lottery Act (Texas Government Code, Chapter 466); applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401; and all final decisions of the Executive Director.

TRD-200702398

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: June 13, 2007



Instant Game Number 817 "\$1 Million Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 817 is "\$1 MILLION CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 817 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 817.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, STAR SYMBOL, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$400, \$1,000, \$10,000 and \$1MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 817 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRV
STAR SYMBOL	WIN

\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$1 MILLION SYMBOL	ONE MILL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 817 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$80.00, \$100, \$200 or \$400.

I. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (817), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 817-0000001-001.

L. Pack - A pack of "\$1 MILLION CASH" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1 MILLION CASH" Instant Game No. 817 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$1 MILLION CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "star" play symbol the player wins the PRIZE shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Adjacent non-winning tickets within a pack will not have identical patterns. Two tickets have identical patterns if and only if they have the same symbols in the same positions.

B. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

C. There will be no more than three (3) identical non-winning prize symbols.

D. The non-winning YOUR NUMBER symbols will be unique.

E. The five (5) LUCKY NUMBER symbols will be unique.

F. The star symbol will never appear as a LUCKY NUMBER.

G. The \$1,000,000 and \$10,000 prize symbols will each appear at least once on all tickets unless otherwise restricted by the prize structure.

H. The prize amount associated with a non-winning YOUR NUMBER position will never have the same numerical value as the corresponding YOUR NUMBER.

I. Non-winning prize symbols will not match winning prize symbols.

J. Winning LUCKY NUMBER positions will be distributed evenly among all possible LUCKY NUMBER positions.

K. Winning YOUR NUMBER positions will be distributed evenly among all possible YOUR NUMBER positions.

L. On tickets that win two (2) or more times (excluding the play spots winning with the star symbol), at least two (2) LUCKY NUMBERS will be used to create winners.

M. The star symbol will not appear more than once on a ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1 MILLION CASH" Instant Game prize of \$20.00, \$40.00, \$80.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$80.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1 MILLION CASH" Instant Game prize of \$1,000, or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$1 MILLION CASH" top level prize of \$1,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$1 MILLION CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1 MILLION CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1 MILLION CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 817. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 817 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	420,000	7.14
\$40	390,000	7.69
\$80	120,000	25.00
\$100	45,000	66.67
\$200	8,000	375.00
\$400	1,050	2,857.14
\$1,000	30	100,000.00
\$10,000	5	600,000.00
\$1,000,000	3	1,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.05. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 817 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 817, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200702363  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: June 11, 2007



## Midwestern State University

Request for Proposals - Outside Counsel

### REQUESTOR:

Board of Regents  
Midwestern State University  
3410 Taft Blvd.  
Wichita Falls, TX 76308

### STATEMENT OF PURPOSE:

The Board of Regents (Board) of Midwestern State University (university or MSU) is requesting proposals for the purpose of retaining a firm to act as the university's outside counsel.

### INSTRUCTIONS TO PROPOSERS:

1. All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal - Outside Counsel Services." All proposals must be received by 5:00 p.m., Wednesday, July 18, 2007.
2. Twelve (12) copies of the proposal are required and may be mailed to: Midwestern State University, ATTN: Debbie Barrow, Executive Associate, 3410 Taft Blvd., Wichita Falls, TX 76308, or hand delivered to 3410 Taft Blvd., Room 107, Hardin Administration Building, Wichita Falls, TX by 5:00 p.m., July 18, 2007. Each proposal should indicate the name and phone number of the principal contact for the firm.
3. Questions or comments concerning this request for proposals should be directed to: Dr. Jesse W. Rogers, President, Midwestern State University, 3410 Taft Blvd., Wichita Falls, TX 76308, (940) 397-4211.
4. The Board intends to select a firm at its meeting August 3, 2007. The selected firm will be notified on or about August 17, 2007.
5. The Board shall submit its selection to the Texas State Attorney General for final approval.

### TERMS AND CONDITIONS:

1. The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within thirty (30) days after the award of the proposal.
2. The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.
3. The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

4. Any agreement or contract resulting from acceptance of a proposal shall be on forms either supplied by or approved by the Office of the Attorney General. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

5. The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

#### **ELIGIBLE PROPOSERS:**

1. The Midwestern State University Board of Regents will only consider proposals from law firms licensed in Texas.

2. Counsel must have prior legal experience with public, non-profit organizations. Experience with state agencies and an interest in education will be viewed favorably in the selection process.

3. Counsel must agree to work closely with the president of the university in matters submitted to Counsel for review.

4. Counsel must agree to attend any and all Board of Regents meetings, which are held no less than quarterly on the campus of Midwestern State University, Wichita Falls, Texas. Counsel's attendance would only be required at the request of the Board and adequate notice would be provided.

5. Counsel must maintain malpractice insurance in an amount of not less \$1,000,000.

#### **SCOPE OF SERVICES:**

The selected firm will provide the following services:

1. In all situations where assistance is required by the Office of the Attorney General on litigation or general counsel matters being handled by the Office of the Attorney General, or where the Office of the Attorney General defers the matter to outside counsel.

2. In situations where expertise in school law and policy is required.

3. In situations where prior knowledge or experience with the particular facts or issues in the matter or where other unusual circumstances exist which would facilitate the most timely and economical handling of the matter.

4. In emergency and other situations that require a response time that the Office of the Attorney General cannot reasonably provide.

5. In situations involving personal meetings or conferences where the charges for legal fees and expenses for travel by the Office of the Attorney General would result in a total cost greater than could be obtained by using the outside counsel.

#### **QUALIFICATIONS:**

1. Describe how the firm is organized and how its resources will be put to work for MSU.

2. List the firm's most recent three (3) years of experience in higher education, school law, state agency or public, non-profit organization relationships. State the term of the relations, briefly describe the work performed, and include the names, addresses and phone numbers of contact persons.

3. Affirm that no individual in the firm has represented any client in any matter pending before Midwestern State University during the previous six-month period.

#### **PERSONNEL:**

1. Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include

their resumes. Indicate the role these individuals assumed in the three-year history of higher education, school law, state agency or public, non-profit organization relationships as described in subsection 2 of the QUALIFICATIONS section.

2. Indicate the availability of individuals described in subsection 1 of this section.

3. Include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities.

#### **COMPENSATION:**

Explain the firm's proposed hourly fee schedule and the projected annual cost for the scope of services detailed in this RFP. If the firm proposes that the university bear the cost of incidental expenses associated with these services, clearly state what type of incidental expense and estimated costs the university would be expected to bear.

TRD-200702285

Jesse W. Rogers

President

Midwestern State University

Filed: June 7, 2007



### **Board of Nurse Examiners**

Memorandum of Understanding (MOU) between the Department of Aging and Disability Services (DADS) and the Board of Nurse Examiners (BNE)

In 1988, a Memorandum of Understanding (MOU) was entered into by the Board of Nurse Examiners (BNE) and the Texas Department of Health (TDH) to define circumstances under which the provision of certain health-related tasks or services in licensed home and community support services agencies (HCSSAs) do not constitute the practice of professional nursing. The regulation of HCSSAs was subsequently transferred to the Department of Human Services (DHS), now the Department of Aging and Disability Services (DADS).

A meeting was held on September 13, 2006 with representatives from DADS, BNE, and the Texas Association for Home Care (TAHC) to determine if there was a need to revise the existing MOU. The attendees unanimously agreed that there was a need to review the MOU, as required by Health and Safety Code (HSC) §142.016, and to modify the MOU to reflect the new regulatory agency's name for HCSSAs and as may otherwise be necessary.

An MOU advisory committee was appointed as required in HSC §142.016(b) consisting of representatives from the Texas New Mexico Hospice Organization, the Texas Nurses Association, the Disability Policy Consortium, the Department of State Health Services, and the Family 2 Family Network (which replaced the Texas Respite Resource Network after it ceased operations in 2000), in addition to TAHC, BNE, and DADS.

A final draft of the MOU was approved by the BNE board on February 19, 2007, and by the DADS' commissioner on May 30, 2007.

#### **MEMORANDUM OF UNDERSTANDING**

**Cooperative Agreement between the Board of Nurse Examiners for the State of Texas & the Department of Aging and Disability Services**

#### **SECTION A: PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to define circumstances under which the provision of health-related tasks or

services by a home and community support services agency (HCSSA) does not constitute the practice of professional nursing.

This MOU sets forth the mutual understanding and agreement between the Board of Nurse Examiners for the State of Texas (BNE) and the Department of Aging and Disability Services (DADS) with regard to services that may be provided by a home and community support services agency (HCSSA) regulated by DADS under Health and Safety Code Chapter 142 and its rules at 40 Texas Administrative Code (TAC), Chapter 97.

The BNE and DADS recognize the desire of individuals and their families to achieve the highest possible quality of life, independence, and integration with family and society. These goals are most often achieved when the individual's health-related needs can be met in the least restrictive environment. In order to ensure the individual's safety in settings to which this MOU applies, the BNE and DADS believe that the individual or the individual's responsible adult must be able and willing to maintain oversight of services performed by unlicensed assistive personnel (UAP) under Section B.

This MOU is entered into by the above-named agencies in compliance with §142.016 of the Health and Safety Code. The provision of nursing services is regulated by the Board of Nurse Examiners, whether the task is performed by a nurse, or delegated by a professional registered nurse to a UAP. In independent living environments, however, it is recognized that a registered nurse (RN) would not be present to assess, plan, implement, and evaluate the provision of care and certain health-related services.

This distinction is noted in §142.001(22) of the Health and Safety Code and 40 TAC §97.2(64), which defines personal assistance services to include personal care and health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the BNE. This MOU is applicable only to a HCSSA regulated by DADS under the Health and Safety Code Chapter 142.

## **SECTION B: APPLICATION**

The BNE and DADS agree that the following services in the specific situations described do not constitute the practice of professional nursing and may be performed by UAPs without RN delegation or supervision for individuals who have stable and predictable conditions.

Stable and predictable conditions refer to situations where the individual's clinical and behavioral status is determined to be non-fluctuating and consistent. A stable, predictable condition involves long-term health-care needs that are not recuperative in nature and do not require the regularly scheduled presence of a registered nurse or licensed vocational nurse. Excluded by this definition are situations where the individual's clinical and behavioral status is expected to change rapidly or in need of the continuous/continual assessments and evaluation of a registered nurse or licensed vocational nurse. The condition of individual's receiving hospice care in an independent living environment where deterioration is predictable shall be deemed stable and predictable.

1. Personal care, to include feeding, preparing meals, transferring, toileting, ambulation and exercise, grooming, bathing, dressing, routine care of hair and skin, and assistance with medications that are normally self administered, may be provided for individuals by UAPs in independent living environments.

An "independent living environment" is an individual's residence which may include a group home, or foster home, or assisted living facility, as well as other settings including, but not limited to school, work, or church, where the client participates in activities. The term does not include settings in which nursing services are continuously provided.

2. Short-term respite services limited to a maximum of 30 consecutive days in which the primary caregiver acts as the individual's advocate and is being relieved of the caregiver role by a UAP. In this setting, the following nursing services may be provided by the UAP:

- (a) Provision of personal care as described in #1 above.
- (b) Feeding and medication administration through a permanently placed feeding tube provided the UAP has completed a training and competency program according to 40 TAC §97.404(h).
- (c) For those receiving regularly scheduled oral or topical medication normally administered by the primary caregiver, the UAP may administer these agents based on specific instructions from the primary caregiver. These tasks do not include:
  - (1) The calculation of any medication doses. Calculation of medication doses does not include measuring a prescribed amount of liquid medication and breaking a scored tablet for administration as instructed by the primary caregiver.
  - (2) Administration of the initial dose of a medication that has not been previously administered to the individual.
  - (3) Administration of medications by any injectable route.
  - (4) Administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments.

(5) Administration of medications by way of a tube inserted in a cavity of the body other than by a permanently placed feeding tube.

3. The provision of (a), (b), and (c) above is limited to a 30-day period for the purpose of respite.

4. No other nursing functions may be provided by the UAP without the delegation and supervision of an RN.

(a) All other nursing services must be performed in accordance with the registered nurse delegation rules 224 or 225.

(b) This MOU does not apply to services provided in a non-respite situation where a RN involved in care decisions has determined under Rule 225 that factors relating to the client, listed in §225.6. RN Assessment of the Client, are sufficient to warrant RN exemption of said nursing services from delegation.

5. This MOU applies to the administration of medications in an assisted living facility (ALF), provided this service is being performed by a HCSSA. If an individual residing in an ALF requires medication administration but no HCSSA is involved, then DADS' rules at 40 TAC §92.41(j) govern this service.

## **SECTION C: EXAMPLES**

The following examples are intended to be neither all inclusive nor exhaustive of the guidance expressed in this MOU.

1. A mother who provides care for her child with cerebral palsy plans to spend a long weekend with her husband. A UAP is hired to provide routine care such as bathing, feeding, dressing, and socialization. The child needs a morning and evening dose of Dilantin via percutaneous endoscopic gastrostomy (PEG) tube. The UAP may administer the Dilantin because this is a routine medication for this child, provided that the UAP has completed a training and competency program according to 40 TAC §97.404(h).

2. A young adult released from a burn center three days ago is being cared for by his family. In addition to assistance with personal assistance services, he needs dressing changes daily to his hands and forearms bilaterally, along with assistance taking pain medication as needed. The individual's parents have been performing all of the above



tasks, but they wish to attend their niece's wedding out-of-state, and will be gone for a period of three consecutive days.

Though the individual could direct a UAP in the performance of personal assistance services, including assistance with oral pain medication as needed, the performance of dressing changes to burns on the individual's hands and forearms is a nursing task and is related to an acute condition (ie: acute conditions are considered to be unstable and unpredictable); therefore, RN delegation under §224.7(2)(B) is required in order for the UAP to provide the service of changing the burn dressings daily.

3. An individual with severe Parkinson's lives in his own apartment and needs assistance on a daily basis with transferring, bathing, grooming, dressing, and exercise. A UAP may provide these personal care services without RN delegation for this individual whose condition is stable and predictable.

4. An individual with a cerebral vascular accident (CVA) 5-years ago has residual right-sided paralysis of his right arm/hand and leg; his condition is now stable and predictable. The individual needs ongoing assistance with meal preparation and grooming, as well as reminders for daily oral medication. The UAP may provide these services without RN delegation for this individual.

5. An individual with cerebral palsy usually has a UAP who assists with feeding, bathing, grooming and transferring. The individual developed pneumonia and was hospitalized for intravenous (IV) antibiotic treatment. The individual is now back home, but still requires IV antibiotics via a peripherally inserted central catheter (PICC) line and Albuterol nebulizer treatments every 12 hours. These tasks cannot be performed by the UAP under the direction of the individual's primary caregiver (individual's responsible adult) because:

(a) IV medications and nebulizer treatments are related to the individual's acute condition of pneumonia, and thus are not related to maintenance of a stable and predictable condition;

(b) IV medications (considered a nursing task) may not be performed independently by the UAP under this MOU, and may also not be delegated under §225.12(5)(B); and

(c) Albuterol nebulizer treatments are not for routine maintenance in this instance as they are related to the acute condition, so a UAP could not perform this task under the MOU. A RN could determine if it was safe to delegate this task under §225.10(2).

(Rev. 1/98; Rev. 3/07)

TRD-200702296

Katherine Thomas

Executive Director

Board of Nurse Examiners

Filed: June 7, 2007

## Texas Public Finance Authority

### Request for Proposals for Bond Counsel

The Texas Public Finance Authority (the "Authority") is requesting proposals for bond counsel services. The deadline for proposal submission is 5:00 p.m., July 2, 2007.

The Authority's Board of Directors (the "Board") will make its selection based upon demonstrated competence and qualifications. Firms responding to the Request for Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to the Authority. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the

suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained from the Authority's website at [www.tpfa.state.tx.us](http://www.tpfa.state.tx.us) or call Paula Hatfield, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-200702365

Kimberly K. Edwards

Executive Director

Texas Public Finance Authority

Filed: June 11, 2007

## Public Utility Commission of Texas

### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 6, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc., doing business as Suddenlink Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 34382 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34382.

TRD-200702394

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 13, 2007

### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 6, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebriidge Acquisition, L.P., doing business as Suddenlink Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 34383 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll

free at 1-800-735-2989. All inquiries should reference Project Number 34383.

TRD-200702395  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 13, 2007



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 8, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Brilliant Energy, LLC for Retail Electric Provider (REP) Certification, Docket Number 34391 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 29, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34391.

TRD-200702396  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 13, 2007



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 5, 2007, Inter-Tel NetSolutions, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60066. Applicant intends to reflect a change in ownership/control.

The Application: Application of Inter-Tel NetSolutions, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34380.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 27, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34380.

TRD-200702393  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 13, 2007



#### Notice of Application for an Electric Service Area Exception Within Wheeler County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 5, 2007, for an amendment to certificated service area boundaries within Hansford County, Texas.

Docket Title and Number: Application of North Plains Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Hansford County, Texas, Docket Number 34377.

The Application: North Plains Electric Cooperative, Inc. (North Plains) requests a service area exception to provide service to a specific customer located within the certificated service area of Southwestern Public Service (SPS). North Plains seeks an exception to provide electric service to Sprinkler Section 45 of B&R Farms. North Plains is able to serve the consumer without large financial input from the consumer or large construction cost by SPS. SPS is in full agreement with the exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than June 8, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34377.

TRD-200702284  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 6, 2007



#### Notice of Application for Designation as a Resale Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 11, 2007, for designation as a resale eligible telecommunications provider (R-ETP) pursuant to P.U.C. Substantive Rule §26.419.

Docket Title and Number: Application of Ganoco, Inc. for Designation as a Resale Eligible Telecommunications Provider. Docket Number 34393.

The Application: The company is requesting ETP designation in order to be eligible to receive reimbursement funds from the Texas Universal Service Fund for discounts provided through the Lifeline program.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by July 12, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34393.

TRD-200702397  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 13, 2007



### Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On June 1, 2007, 877-RingAgain filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60145. Applicant intends to relinquish its certificate.

The Application: Application of 877-RingAgain to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 34370.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 27, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34370.

TRD-200702283

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: June 6, 2007



### Texas Residential Construction Commission

#### Notice of Applications for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at [www.trcc.state.tx.us](http://www.trcc.state.tx.us).

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The "Texas Star Builder" designation requires that a builder or remodeler demonstrate that its education, experience, and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2), the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Hill Country Homes, Inc., 202 South First Street, Copperas Cove, TX 76522. Hill Country Homes, Inc. holds TRCC builder registration #7261. The applicant's registered agent is Linda S. McMullin.

S & T Custom Homes, Inc., 7125 Hunnington Drive, Sanger, TX 76266. S & T Custom Homes, Inc. holds TRCC builder registration #9139. The applicant's registered agent is Stephen Koch.

Team 3 Homes, 1104 La Paloma Court, Southlake, TX 76092. Team 3 Homes holds TRCC builder registration #6205. The applicant's registered agent is Patricia A. Hanson.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200702399

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Filed: June 13, 2007



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).